

“Whereas the government of the territories of Mysore
“heretofore administered on our behalf by the British
“Government has this day been transferred to us by
“the proclamation of His Excellency the Viceroy and
“Governor-General of India in Council, dated the 25th
“day of March 1881,
“We do hereby further declare that all laws and rules
“**having the force of law now in force in the said territories**
“**shall continue to be in force in the said territories.**”
—*Extract from Proclamation issued by His Highness*
Maharaja Sri Chamarajendra Wodeyar Bahadur.

PREFACE TO THE SECOND EDITION.

In bringing the book up-to-date the following Acts have been omitted as they are completely repealed by later Regulations as indicated in the third column of the Table of Acts contained in pages (iv) to (viii) ;—

Act	XXVII	of	1860
"	V	"	1861
"	III	"	1867
"	XXIII	"	1870
"	III	"	1877
"	XV	"	1877
"	XII	"	1879

19TH FEBRUARY 1923,
Bangalore City.

J. APPAJI GOWDA,
*Assistant Secretary to the Govern-
ment of Mysore, Legislative Dep't.*

P R E F A C E.

This volume, which has been prepared under the orders of the Government of Mysore as the first step towards the issue of a complete Code of the laws in force in Mysore, comprises the Acts introduced during the period of the administration of the State by the British Government on behalf of His Highness the Maharaja and continued in force by the proclamation issued by His late Highness Sri Chamarajendra Wodeyar Bahadur on the 25th March 1881 on assuming charge of the Government. It does not, however, include Acts which have ceased to be in force; nor the following Acts which have been reserved for revision in the near future :—

The Indian Penal Code, Act XLV of 1860, as amended by Acts XXVII of 1870 and XIX of 1872 ;

The Whipping Act, VI of 1864 ;

The Court Fees Act, VII of 1870 ;

The Indian Evidence Act, I of 1872, as amended by Act, XVIII of 1872 ; and

The Indian Stamp Act. I of 1879

2. A table of the Acts mentioned in Parts I, II, III and IV of the Schedule to the Instrument of Transfer is prefixed, showing as regards each Act whether it has been repealed or otherwise affected by legislation, and, if not wholly repealed, how it has been disposed of. Where an Act has been amended or partially repealed and afterwards totally repealed, the total repeal only has been entered in the list. And where an Act has been wholly repealed or spent or has expired, the entries relating to it are printed in italics.

3. In reprinting the Acts, the chronological arrangement adopted in the Schedule to the Instrument of Transfer has been followed.

Each Act is preceded by the Notification extending it to Mysore. Except in a few instances where they have become inoperative, the directions contained in such Notifications in regard to the omission or alteration of particular provisions, as well as repeals and amendments enacted by law, have been given effect to in their proper places, references thereto being given in foot notes, or, in the case of repeals or omissions of entire sections, opposite to their marginal notes.

4. The interpretation of the Acts comprised herein is subject to the directions contained in the Notifications printed below, which were issued by the Government of His Highness the Maharaja after the Rendition.

5. A short Index is appended to the volume.

K. S. CHANDRASEKHARA AIYAR, B.A., B.L.,
Assistant Secretary, to the Government of Mysore,
Legislative Department.

BANGALORE,
The 9th October 1899.

(*Vide para 4 of Preface*)

NOTIFICATIONS BY THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE

(1) *Notification No. 24, dated the 28th April 1881.*

In all Notifications and Rules having the force of law in Mysore where the words "Judicial Commissioner" and "Court of the Judicial Commissioner" now occur, the words "Chief Judge" and "Chief Court" shall henceforth be read.

(2) *Notification No. 153, dated the 2nd September 1881.*

In all Acts, Rules and Regulations now in force in Mysore, the expressions "The Government of India," "The Governor General of India in Council" and "Local Government" shall denote "The Government of His Highness the Maharaja of Mysore."

(3) *Notification No. 92, dated the 31st July 1885.*

His Highness the Maharaja is pleased to point out that the Rules of Interpretation laid down in Notification laid down in Notification No. 153 dated 2nd September 1881, published at page 124 of the *Mysore Gazette* of 3rd September 1881, do not apply to those parts of the Acts of the British Legislature which apply in terms to British subjects in the dominions of Princes and States in India, in alliance with Her Majesty, and which, for the reason and to that extent, have the force of law in Mysore by virtue of the authority of the British Legislature

2. His Highness is further pleased to direct that the abovementioned Notification, No. 153, dated 2nd September 1881, shall not apply to the General Clauses Act (I of 1868,* or to Section 230 of the Indian Penal Code as amended, by Act XIX of 1872, or to the Indian Coinage Act XXIII of 1870.

*Since repealed by Regulation III of 1899.

Table of Acts mentioned in Parts I, II, III and IV of the
Schedule to the Instrument of Transfer.

PART I.—General Acts.

Number and year	Title or short title	Whether repealed or otherwise affected by legislation	How disposed of
1	2	3	4
XX of 1847 .	For the encourage- ment of learning in the territories sub- ject to the Govern- ment of the East India Company, by defining and provid- ing for the enforce- ment of the right called copyright therein.	Repealed in part by Acts IX of 1871 and I of 1879, also, be- fore the extension of the present Act to Mysore, by Act XVII of 1862.	Printed, pp. 1—10
[a] XIX of 1850.	Concerning the bind- ing of Apprentices (in part).	Repealed in part, be- fore the extension of the Act to Mysore, by Acts XIV of 1870 and XVI of 1874.	Printed, pp. 11—18
XIII of 1859..	To provide for the punishment of brea- ches of contract by Artificers, Work- men and Labourers in certain cases.	.. .	Printed, pp. 21—23
XXVII of 1860 .	<i>For facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of de- ceased persons.</i>	<i>Repealed by Regula- tion VII of 1901.</i>	
XLV of 1860 .	The Indian Penal Code.	Amended by Acts XXVII of 1870 and XIX of 1872, and Regulations I of 1892 and II of 1894, IV of 1894 and I of 1904..	Reserved for revi- sion
V of 1861 ..	<i>For the Regulation of Police.</i>	<i>Repealed by Regu- lation V of 1903.</i>	
VI of 1861 ..	<i>To authorize the pu- nishment of whipp- ing in certain cases.</i>	<i>Repealed by Regula- tion V of 1903.</i>	
[b] X of 1865 ..	The Indian Succes- sion Act, 1865.	Repealed in part by Acts VII of 1870 and XV of 1877 ; also before the exten- sion of the present Act to Mysore, by Act XXIV of 1867.	Printed, pp. 25— 131.

[a] Applies only to European and Eurasian children.

[b] Does not apply to Native Christians.

Number and year	Title or short title	Whether repealed or otherwise affected by legislation	How disposed of
1	2	3	4
[a] XI of 1865 ..	<i>To consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the Ordinary Originally Civil Jurisdiction of the High Courts of Judicature.</i>	<i>Repealed by Regulation VIII of 1911.</i>	
V of 1866 ..	To provide a summary procedure on Bills of Exchange, and to amend in certain respects the Commercial Law of British India.	Repealed in part by Act IX of 1872 and by Act X of 1877 as amended by Act XII of 1879, section 99.	Printed, pp. 132—133.
X of 1866 ..	<i>The Indian Companies Act, 1866.</i>	<i>Repealed by Regulation III of 1895, section 2.</i>	
XXI of 1866 ..	The Native Converts Marriage Dissolution Act, 1866.	Repealed in part by Act VII of 1870; also before the extension of the Act to Mysore, by Act XVI of 1874.	Printed, pp. 134—143.
III of 1867 ..	<i>To provide for the punishment of public gambling and the keeping of common gaming houses.</i>	<i>Repealed by Regulation V of 1906.</i>	
XXV of 1867 .	For the regulation of printing presses and newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.	Amended by Regulation I of 1894.	Printed, pp. 145—156.
I of 1868 ..	<i>The General Caluses Act, 1868 ; (in part)</i>	<i>Repealed by Regulation III of 1899.</i>	
VII of 1870 ..	<i>The Court Fees Act, 1870.</i>	<i>Repealed by the Mysore Court Fees Regulation III of 1900.</i>	
X of 1870 ..	<i>The Land Acquisition Act, 1870.</i>	<i>Repealed by Regulation VII of 1894, section 2.</i>	

Number and year	Title or short title	Whether repealed or otherwise affected by legislation	How disposed of
1	2	3	4
XXIII of 1870	<i>The Indian Coinage Act 1870.</i>	<i>Repealed by Regulation VII of 1900.</i>	
XXVI of 1870	<i>The Prisons Act, 1870 (in part).</i>	Repealed in part, before the extension of the Act to Mysore by Acts XII of 1873 and XVI of 1874; and amended by Act XIV of 1878.	Printed, pp. 157—176.
XXVII of 1870	<i>Indian Penal Code Amendment</i>	Repealed in part by Act X of 1872.	Reserved for revision.
I of 1871 ..	<i>The Cattle Trespass Act, 1871.</i>	Amended by Regulation VIII of 1892.	Printed, pp. 177—189.
X of 1871 ..	<i>The Excise Act, 1871; (in part).</i>	<i>Repealed by Act XXII of 1881, section 2. (Vide also section 15 of Regulation III of 1883).</i>	
XXIII of 1871	<i>The Pensioners Act, 1871; (in part).</i>	....	Printed, pp. 190—193.
XXVI of 1871	<i>The Land Improvement Act, 1871; (in part).</i>	<i>Repealed by Regulation IV of 1890, section 2.</i>	
I of 1872 ..	<i>The Indian Evidence Act, 1872.</i>	Amended by Act XVIII of 1872, Regulations X of 1900, VIII of 1901 and III of 1912 and X of 1918 and repealed in part by Regulation III of 1899.	Reserved for revision.
IX of 1872 ..	<i>The Indian Contract Act, 1872.</i>	Repealed in part by Act I of 1877. Amended by Regulation VI of 1892 and IV of 1912.	Printed, pp. 195—283.
X of 1872 ..	<i>The Code of Criminal Procedure.</i>	<i>Repealed by Act X of 1882, section 2. (Vide also section 54 of Regulation I of 1886) and Regulation II of 1904.</i>	
[a] XV of 1872	<i>The Indian Christian Marriage Act, 1872, (in part).</i>	....	Printed, pp. 285—313.
XVIII of 1872	<i>The Indian Evidence Act, Amendment Act.</i>	Repealed by Acts XII of 1873 & XII of 1876.	Reserved for revision.

[a] Applies so far as regards marriages between persons, one of whom is a Native Christian subject of Mysore, and neither of whom is a Christian British subject.

Number and year	Title or short title	Whether repealed or otherwise affected by legislation	How disposed of
1	2	3	4
XIX of 1872..	Indian Penal Code Amendment (Definition of "coin").	....	Reserved for revision.
V of 1873 ..	The Government Savings Banks Act, 1873.	....	Printed pp. 315—322.
X of 1873 ..	The Indian Oaths Act, 1873.	Repealed in part, before the extension of the Act to Mysore, by Acts XII of 1873 and XII of 1876.	Printed pp. 323—330.
XI of 1874 ..	To amend the Code of Criminal Procedure.	Repealed by Act X of 1882, section 2. (Vide also section 54 of Regulation I of 1886.) and Regulation II of 1904.	•
XXI of 1876..	To amend the land Improvement Act, 1871.	Repealed by Regulation IV of 1890, section 2.	
I of 1877 ..	The Specific Relief Act, 1877, (in part)	....	Printed, pp. 331—366.
III of 1877 ..	The Indian Registration Act, 1877.	Repealed by Regulation I of 1903.	
X of 1877 ..	The Code of Civil procedure; (in part).	Repealed by Act XIV of 1882, section 3. (Vide also section 52 of Regulation II of 1884).	
XV of 1877 ..	The Indian Limitation Act, 1877.	Repealed by Regulation IV of 1911.	
I of 1878 ..	The Opium Act, 1878 (in part).	....	Printed, pp. 367—378.
I of 1879 ..	The Indian Stamp Act, 1879, (in part).	Repealed by Regulation of 1900.	
IV of 1879 ..	The Indian Railway Act, 1879; (in part).	Repealed by Regulation IV of 1904.	
XII of 1879 ..	To amend the Code of Civil Procedure, the Registration Act, 1877, and the Limitation Act, 1877; (in part).	Repealed in part by Act XIV of 1882, section 3. (Vide also section 52 of Regulation II of 1884.) • Also, in part, virtually, by Regulation III of 1896, sections 22, 24 and 25. Repealed by Regulation I of 1903, and IV of 1911.	

Number and year	Title or short title	Whether repealed or otherwise affected by legislation	How disposed of
1	2	3	4
XIV of 1880..	<i>The Indian Census Act, 1880, (in part).</i>	<i>Spent, as the Census which the Act contemplated has been taken.</i>	

PART II—Madras Acts.

III of 1869 ..	<i>To empower revenue officers to summon persons to attend at their cutcherries for the settlement of matters connected with revenue administration.</i>	<i>Repealed by Regulation IV of 1888, section 2.</i>	
I of 1873 ..	<i>To prevent the indiscriminate destruction of wild elephants.</i>	....	Printed, pp. 379—380.
VIII of 1878..	<i>The Madras Coffee Stealing Prevention Act 1878.</i>	....	Printed, pp. 381—384.

PART III—Bombay Acts.

I of 1865 ..	<i>Bombay Survey and Settlement Act; (in part).</i>	<i>Repealed by Regulation IV of 1888, section 2.</i>
IV of 1868 ..	<i>Act for City Surveys and amendment of Bombay Survey and Settlement Act, 1868.</i>	<i>Repealed by Regulation IV of 1888, section 2.</i>

PART IV—Bengal Act.

(a) I of 1869 ..	<i>For the prevention of cruelty to animals; (in part).</i>	<i>Virtually repealed by Regulation I of 1895, section 1, cl. (4).</i>
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[a] Section 9 of this Act, as introduced, declared that it "shall extend to the Town and Cantonment of Bangalore, within Municipal limits, as fixed by the Chief Commissioner." The power given by section 10 to extend the Act to other places has not been exercised.

THE ACTS
INTRODUCED INTO MYSORE.
BEFORE THE RENDITION.

ACT No. XX OF 1847.

*Notification by the Government of India, Foreign Department,
No. 176, Judicial, dated Simla, the 12th September 1867.*

His Excellency the Governor-General of India in Council
is pleased to declare Acts XX of 1847 and XXV of 1867*
(for the Regulation of Printing Presses, etc.) in force in the
Province of Mysore.

* For Act XXV of 1867, *vide infra*.

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ACT No. XX OF 1847.

(PASSED ON THE 18TH OF DECEMBER 1847.)

An Act for the encouragement of learning in the territories subject to the Government of the East India Company, by defining and providing for the enforcement of the right called Copyright therein.

WHEREAS doubts may exist whether the right called Copyright can be enforced by the common law of England in those parts of the territories subject to the Government of the East India Company into which the common law of England has been introduced ;

Preamble.

And whereas doubts may exist whether the said right can be enforced by virtue of the principles of equity and good conscience in the other parts of the territories subject to the Government of the East India Company ;

And whereas for the encouragement of learning it is desirable that the existence of the said right should be placed beyond doubt, and that the said right should be made capable of easy enforcement in every part of the said territories ;

And whereas it is doubtful whether the Act of Parliament 5 & 6, Victoria, Chapter 45, entitled "*An Act to amend the Law of Copyright*," although such Act extend to every part of the British dominions, has made appropriate and sufficient provision for the enforcement in every part of the said territories subject to the Government of the East India Company of the said right by proprietors thereof ; and whether the said Act of Parliament has made provision for the enforcement of the said right by or against any persons not being subject to the jurisdiction of the Courts established by Her Majesty's Charter ;

5 & 6 Vict.,
C. 45.

1. It is therefore hereby enacted that the Copyright in every book published in the lifetime of its author within the said territories after the passing of the Act of Parliament 3 & 4, Wm. IV, Chapter 85, entitled "*An Act for effecting an arrangement with the East India Company and for the better Government of His Majesty's Indian Territories till the 30th day of April, 1854*," shall endure for the natural life of such author, and for the further term of seven years commencing

Duration of
Copyright
in book pub-
lished in
author's
lifetime.
3 & 4 Wm.
VI, C. 85.

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In book
published
after author's
death.

Proprietor-
ship.

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license
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right
proprietor
refuses.

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copyright
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and licenses.

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copies.

at the time of his death, and shall be the property of such author and his assigns: Provided always that, if the said term of seven years shall expire before the end of forty-two years from the publication of such book, the Copyright shall in that case endure for such period of forty-two years; and that the Copyright in every book published after the death of its author and after the passing of the Act of Parliament last aforesaid shall endure for the term of forty-two years from the first publication thereof and shall be the property of the proprietor of the author's manuscript, from which such book shall be first published, and his assigns.

2. And whereas it is expedient to provide against the suppression of books of importance to the public: It is enacted that it shall be lawful for the Governor-General in Council on complaint made to them that the proprietor of the Copyright in any book published after the passing of this Act within the said territories, has, after the death of its author, refused to republish or to allow the republication of the same, and that by reason of such refusal, such book may be withheld from the public, to grant a license to such complainant to publish such book in such manner and subject to such conditions as they may think fit, and it shall be lawful for such complainant to publish such book according to such license.

3. And it is hereby enacted, that a book of registry wherein may be registered, as hereinafter enacted, the proprietorship in the Copyright of books and assignments thereof, and licenses affecting such Copyright, shall be kept in the office of the Secretary to the Government of India for the Home Department, and shall at all convenient times be opened to the inspection of any person on payment of eight annas for every entry which shall be searched for or inspected in the said book, and that such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand, to any person requiring the same, on payment to him of the sum of two rupees, and such copies so certified shall be received in evidence in all Courts and in all summary proceedings, and shall be *prima facie* proof of the proprietorship or assignment of Copyright or license as therein expressed, but subject to be rebutted by other evidence.

4. [Penalty for making any false entry in the Registry Book, etc.] Repealed by Act XVII of 1862.*

* Act XVII of 1862 was passed in British India before the date of the extension of the present Act to Mysore.

Sections 5-7.

5. And it is enacted that, after the passing of this Act, it shall be lawful for the proprietor of Copyright in any book, published after the passing of the said Act of Parliament, 3 & 4, Wm. IV, Cap. 85, to make entry in the Registry Book of the title of such book, the time of the first publication, and the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the Copyright of the said book, or of any portion of such Copyright in the form in that behalf given in the Schedule to this Act annexed upon payment of the sum of two rupees to the said Secretary; and that it shall be lawful for every such registered proprietor to assign his interest or any portion of his interest therein, by making entry in the said Book of Registry of such assignment, and of the name and place of abode of the Assignee thereof, in the form given in that behalf in the said Schedule on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, [a] and shall be of the same force and effect as if such assignment had been made by deed.

Copyright proprietor's right to make entries in Registry.
3 & 4 Wm. IV, C. 85.

Fee.

Assignment of copyright by entry in registry.

6. And it is enacted that, if any person shall deem himself aggrieved by any entry made under colour of this Act in the said Book of Registry, it shall be lawful for such person to apply by motion to the Supreme Court of Calcutta, or, if the Court shall not be then sitting, to any Judge of such Court sitting in chambers, for an order that such entry may be expunged or varied, and that upon any such application to the said Court, or to a Judge as aforesaid, such Court or Judge shall make such order for expunging, varying or confirming such entry either with or without costs, as to such Court or Judge shall seem just; and the said Secretary shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same, according to the requisitions of such order.

Application by person aggrieved by entry in Registry for order to vary or expunge it.

7. And it is enacted that, if any person shall, after the passing of this Act, print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting Copyright, without the consent in writing of the proprietor thereof, or shall have in his possession for sale or hire any such book so unlawfully printed without such consent as aforesaid, such offender, if he shall have so offended within the local limits of the jurisdiction of any of the Courts of Judicature established by Her Majesty's Charter, shall be

Liability for infringement of Copyright

[a] Words repealed by Act I of 1879 have been omitted.

Section 8.

liable to a special action on the case in such Court, and if he shall have so offended in any other part of the territories subject to the Government of the East India Company, to a suit in the Zilla Court within the jurisdiction of which he shall have so offended, which shall and may be prosecuted in the same manner in which any other action of damages may be brought and prosecuted there, and if he shall have so offended in any such last mentioned part of the territories subject to the Government of the East India Company in which there is no Zilla Court, to a suit in the highest local Court exercising original civil jurisdiction in such part of the said territories.

Notice to be given by defendant to plaintiff in suit for infringing Copyright.

8. And it is hereby enacted that, after the passing of this Act, if any suit or action brought in any of the Courts of Judicature established by Her Majesty's Charter under the provisions of this Act against any person, for printing any such book for sale, hire or exportation, or for selling, publishing or exposing to sale or hire, or causing to be sold, published or exposed to sale or hire, or for having in his possession for sale or hire, any such book so unlawfully printed, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action ;

Particulars to be stated in notice when right of plaintiff is denied.

and if the nature of his defence be that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim Copyright, or is not the proprietor of the Copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the Copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the Copyright therein, together with the title of such book, and the time when and the place where such book was first published ;

Effect of omission.

otherwise the defendant in such action shall not, at the trial or hearing of such action, be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such Copyright as aforesaid, or that he was not the proprietor of the Copyright therein, and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such

Sections 9-10.

book, or the proprietor of the Copyright therein, than the person specified in such notice. or give in evidence in support of his defence any other book than one substantially corresponding in title, time and place of publication, with the title, time and place specified in such notice.

9. And it is hereby enacted that, after the passing of this Act, in any such suit or action as last aforesaid brought in any Zilla Court or other local Court as aforesaid the defendant shall state in his answer all such matters as he means to rely on, and which by the last preceding section the defendant in any suit or action brought in any of the Courts of Judicature established by Her Majesty's Charter is required to give notice of in writing; otherwise such defendant shall be subject to the same consequences for any omission in his answer as a defendant is made subject to by the last preceding section for any omission in his notice.

Particulars to be stated in defendant's answer to suit.

Effect of omission.

10. And it is hereby enacted that, when any publisher or other person shall, within the said territories before or at the time of the passing of this Act, but after the passing of the said Act of Parliament, 3 & 4, Wm. IV, Cap. 85, have projected, conducted and carried on, or shall hereafter project, conduct or carry on, or be the proprietor of any Encyclopædia, review, magazine, periodical work or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles or portions thereof, for publication in, or as part of the same, and such Work, Volumes, Parts, Essays, Articles or Portions shall have been, or shall hereafter be, composed under such employment, on the terms that the Copyright therein shall belong to such Proprietor, Projector, Publisher or Conductor, and paid for by such Proprietor, Projector, Publisher or Conductor,

Copyright in encyclopædia Review, etc. 3 & 4 Wm. IV, C. 85.

the Copyright in every such Encyclopædia, Review, Magazine, Periodical work and work published in a series of Books or Parts, and in every Volume, Part, Essay, Article and Portion so composed and paid for, shall be the property of such Proprietor, Projector, Publisher or Conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of Copyright therein as is given to the authors of Books by this Act, except only that in the case of Essays, Articles or Portions forming part of and first published in Reviews, Magazines or other

Sections 11-12.

Periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act :—

Consent of
author to
publication
singly.

Provided always, that during the term of twenty-eight years the said Proprietor, Projector, Publisher or Conductor shall not publish any such Essay, Article or Portion separately or singly without the consent previously obtained of the author thereof or his assigns :

Employee's
right to
publish
separately.

Provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or shall be so employed as aforesaid, to publish any such his composition in a separate form, who, by any contract, express or implied, may have reserved or may hereafter reserve to himself such right ; but every author reserving, retaining or having such right, shall be entitled to the Copyright in such composition when published in a separate form according to this Act, without prejudice to the right of such Proprietor, Projector, Publisher or Conductor as aforesaid.

Rights of
proprietor of
copy right on
making entry
in registry.

11. And it is hereby enacted, that the Proprietor of the Copyright in any Encyclopædia, Review, Magazine, Periodical work or other work published in a series of Books or Parts shall be entitled to all the benefits of the registration in the office of the Secretary to the Government of India for the Home Department, under this Act, on entering in the said Book of Registry the title of such Encyclopædia, Review, Periodical work or other work published in a series of Books or Parts, the time of the first publication of the first Volume, Number or Part thereof, or of the first Volume, Number or Part first published after the passing of this Act, in any such work which shall have been published heretofore, and after the passing of the said Act of Parliament, 3 & 4, Wm. IV, Cap. 85, and the name and place of abode of the Proprietor thereof and of the Publisher thereof when such Publisher shall not also be the Proprietor thereof.

Proprietor
ship of copies
of book
illegally
printed

12. And it is enacted that all copies of any book wherein there shall be Copyright, and of which entry shall have been made in the said Registry Book, and which shall have been unlawfully printed without the consent of the Registered Proprietor of such Copyright in writing under his hand first obtained shall be deemed to be the property of the Proprietor of such Copyright and who shall be registered as such ; and

Sections 13-15.

such Registered Proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same or damages for the detention thereof.

13. And it is enacted that, if the case be within the jurisdiction of any of the Courts of Judicature established by Her Majesty's Charter, such Registered Proprietor shall be entitled to sue for and recover such copies or damages for the detention thereof, in an action of detinue from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover; and, that if the case be within the jurisdiction of any Zilla Court or other local Court as aforesaid, the Registered Proprietor shall be entitled to sue for and recover such copies or damages for the detention or conversion thereof, in such form as is in use in the said Zilla or other local Courts for the recovery of specific personal property or damages for the detention or conversion thereof.

Right of
copyright
proprietor
to sue for
and recover
copies or
damages.

14. And it is enacted that no Proprietor of Copyright in any book first published after the passing of the said Act of Parliament, 3 & 4, Wm. IV, Cap. 85, shall maintain, under the provisions of this Act, any action or suit at law or in equity, or any summary proceeding in respect of any infringement of such Copyright, unless he shall, before commencing such action, suit or proceeding, have caused an entry to be made in the Book of Registry at the office of the said Secretary of such book, pursuant to this Act:

Entry in
registry to be
made before
Copyright
Proprietor
can proceed
under Act
3 & 4 Wm
IV, C 85.

Provided always that the omission to make such entry shall not affect the Copyright in any Book, nor the right to sue or proceed in respect of the infringement thereof, except the right to sue or proceed in respect of the infringement thereof under the provisions of this Act.

Omission to
make entry
not to affect
Copyright,
etc.

15. And it is enacted, that if any action or suit shall be commenced or brought in any of the Courts of Judicature established by Her Majesty's Charter against any person or persons whomsoever, for doing or causing to be done anything in pursuance of this Act, the defendant or defendants in such action may plead the general issue and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant or the plaintiff shall become non-suited or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath in the said last mentioned Courts.

Plea by
defendant
and special
evidence in
actions for
things done
under Act.

Defendant to
have full
costs if
successful.

(Section 16-17—Schedule Nos. 1-2.)

Limitation
of criminal
proceedings
for breach
of Act.

16. And it is enacted that all [a] indictments, informations and other criminal proceedings for any offence which shall be committed against this Act shall be brought, sued and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of none effect.

This Act not
to affect
rights
subsisting
at the time
of its pass-
ing.

17. Provided always, and it is enacted that nothing in this Act contained shall affect, alter or vary any right subsisting at the time of passing this Act except as herein expressly enacted; and all contracts, agreements, and obligations made and entered into before the passing of this Act and all remedies relating thereto shall remain in full force, anything herein contained to the contrary notwithstanding.

SCHEDULE.

No. 1.

Original entry of Proprietorship of Copyright of a Book.

Time of making the entry	Title of Book	Name of the Pub- lisher and place of publication	Name and place of abode of the Proprietor of the Copyright	Date of first publication

No. 2.

Form of entry of Assignment of Copyright in any Book previously registered.

Date of entry	Title of Book	Assignor of the Copyright	Assignee of the Copyright
	(Set out the title of the Book and refer to the page of the Registry Book in which the original entry of the Copy- right thereof is made.)		

[a] Words repealed by Act IX of 1871 have been omitted.

ACT No. XIX OF 1850.

Notification by the Government of India, Foreign Department, No. 121, Judicial, dated Simla the 12th August 1875.

The Governor-General in Council is pleased to extend to Mysore Act XIX of 1850 (concerning the Binding of Apprentices), subject to the following modifications, (namely) :—

Omit Sections 5, 6, 7, 22 and 23.

To Section 3 add “ or required to find security for good behaviour.”

In Section 10, omit the passage relating to apprentices bound to sea-service and the words “ or Registering Officer.”

In Section 11, for “8” read “9” and omit the words “ or Registering Officer.”

In Sections 12 and 20, omit the words “ or Registering Officer.”

In Section 13, omit the words “ in the said territories.”

In Section 15, omit the words “ or on board the vessel to which he belongs.”

In Section 18, omit the words referring to causes of complaint arising on boardship.

In Sections 19, 20 and 21 and in Schedules A & B, for “ executors or administrators” and “ executors and administrators,” read “ legal representatives.”

In Section 24, omit the words “ without the said towns and island.”

In Schedule A, omit the words “ and seals” and the letters “ L. S.”

The operation in Mysore of Act XIX of 1850, as above modified, is limited to European and Eurasian children.

ACT No. XIX OF 1850.

(PASSED BY THE GOVERNOR-GENERAL OF INDIA IN
COUNCIL ON THE 11TH APRIL 1850.)

Concerning the Binding of Apprentices.

Preamble.

For better enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts or employments, by which, when they come to full age, they may gain a livelihood; It is enacted as follows :—

Apprenticing
of child
between 10
and 18 years
old.

1. Any child, above the age of ten, and under the age of eighteen years, may be bound apprentice by his or her father or guardian to learn any fit trade, craft or employment, for such term as is set forth in the contract of apprenticeship, not exceeding seven years, so that it be not prolonged beyond the time when such child shall be of the full age of twenty-one years, or, in the case of a female, beyond the time of her marriage.

Evidence of
age in ques-
tions as to
right to
service.

2. The age set forth in the contracts shall be evidence of the age of the child, in all questions which arise as to the right of the master to the continuance of the service.

Powers of
Magistrate
or Justice
acting for
orphans, &c.

3. Any Magistrate or Justice of the Peace may act with all the powers of a guardian under this Act, on behalf of any orphan, or poor child abandoned by its parents, or of any child convicted before him, or any other Magistrate, of vagrancy, or the commission of any petty offence, [a] or required to find security for good behaviour [a].

Apprenticing
of child
brought up
by public
charity.

4. An orphan or poor child, brought up by any public charity, may be bound apprentice by the Governors, Directors, or Managers thereof, as his or her guardians for this purpose.

5. (*Apprenticing of such boy in sea service.*)

6. (*Apprenticing of such boy in ship of the East India Company.*)

7. (*Who to be agent of master of apprentice serving in ship.*)

Omitted as directed by Notification No. 121—J., dated the 12th August 1875.

[a-a] These words have been added as directed by Notification No. 121 J, dated the 12th August 1875.

Sections 8-12.

8. Every contract of apprenticeship shall be in writing, according to the form given in the Schedule (A) annexed to this Act, or to the like effect, which shall set forth the conditions agreed upon particularly specifying the age of the apprentice, the term for which he is bound, and what he is to be taught.

Form and contents of contract of apprenticeship

9. Every such contract shall be signed by the person to whom the apprentice is bound, and by the person by whom he is bound, and by the apprentice, when he is of the age of fourteen years or more at the time of binding; but, when the apprentice is bound by the Governors, Directors or Managers of a Public Charity, the signature of two of them, or of their Secretary or Officer, shall be sufficient on behalf of the persons binding the apprentice.

Signature to contract.

10. No such contract shall be valid unless it be executed in the manner aforesaid, nor until it has been deposited in the office of the Chief Magistrate of the place or district where it has been executed [a]; and the person in whose office any such contract is deposited shall give to each of the parties a copy thereof, certified under his hand, which certified copies shall be received as evidence of the contract, without formal proof of the handwriting of the Magistrate [b].

Contract no valid unless executed as prescribed and deposited.

Copies to be given to parties.

11. The terms of service may be changed at any time during the apprenticeship, or the contract may be determined, with the consent of both parties to the contract or their personal representatives, and with the consent of the apprentice, if he is above the age of fourteen years: Provided that the changes agreed to or the termination of the contract shall be expressed in writing on the original contract with the signature of the proper parties according to Section 9 [c] of this Act; and the Magistrate [b] shall thereupon make under his hand corresponding endorsements on the office copies, which shall be brought to him at the same time for that purpose.

Alteration of terms of service and termination of contract.

12. The master of any apprentice bound under this Act may, with the consent of the person by whom he was bound, and with the consent of the apprentice, if he is above the age of fourteen years, assign such apprentice to any

Assignment of apprentice to new master.

[a] and [b] Certain words have been omitted as directed by Notification No. 121—J., dated the 12th August 1875.

[c] The figure "4" has been substituted for the figure "8" as directed by Notification No. 121—J., dated the 12th August 1875.

Sections 13-14.

other person, who is willing to take him for the residue of his apprenticeship, and subject to the conditions thereof : Provided that such person shall, by endorsement under his own hand on the contract, declare his acceptance of such apprentice, and acknowledge himself bound by the agreements and covenants therein mentioned, to be performed on the part of the master, and that the consent of the other parties aforesaid shall be expressed in writing on the same, and signed by them respectively : And every such assignment shall be certified on the office copies of the contract under the hand of the Magistrate [a] according to the form given in Schedule (B) annexed to this Act.

Powers of
Magistrate
in case of
complaint by
apprentice
against
master.

13. Upon complaint made to any Magistrate [b] by or on behalf of any apprentice bound under this Act, of refusal or neglect to provide for him, or to teach him according to the contract of apprenticeship, or of cruelty, or other ill-treatment by his master, or by the agent under whom he shall have been placed by his master, the Magistrate may summon the master or his agent, as the case may be, if he shall be within his jurisdiction, to appear before him at a reasonable time, to be stated in the summons, to answer the complaint ;

and at such time, whether the master or his agent be present or not (service of the summons being proved), may examine into the matter of the complaint ; and, upon proof thereof, may cancel the contract of apprenticeship, and assess upon the offender, whether he shall be the master or his agent, a reasonable sum for behoof of the apprentice, not exceeding four times the amount of the premium paid upon the binding, or if no premium, or a less premium than fifty rupees was paid, not exceeding two hundred rupees ;

and, if the offender shall not pay the sum so assessed, may levy the same by distress and sale of his goods and chattels, and, if the offender shall not be the master but his agent, by distress and sale of the goods and chattels of the master also.

Power of
master or
his agent to
chastise ap-
prentice.

14. No contract of apprenticeship shall be cancelled, nor shall any master or his agent be liable to any criminal proceeding, on account of such moderate chastisement for misbehaviour, given to any apprentice by his master or the

[a] and [b] Certain words have been omitted as directed by Notification No. 121—J., dated the 12th August 1873.

Sections 15-16.

agent of his master, as may lawfully be given by a father to his child ; and the provision for enabling the contract of apprenticeship to be cancelled shall not bar any criminal proceeding against any master or his agent for an assault or other offence committed against his apprentice, for which he would be liable to be punished, had it been against his child, whether or not any proceedings be taken for cancelling the contract of apprenticeship.

15. Upon complaint made to any Magistrate, by or on behalf of the master of any apprentice bound to him under this Act, of any ill-behaviour of such apprentice, or if such apprentice shall have absconded, the Magistrate may issue his warrant for apprehending such apprentice, and may hear and determine the complaint, and punish the offender by an order for keeping the offender, if a boy, in confinement in any debtor's prison or other suitable place not being a criminal jail, for any time not exceeding one month, of which one week may be in a solitary confinement, during which time such allowance shall be made for his subsistence by the master or his agent as the Magistrate shall order ; and, if the offender be a boy of not more than fourteen years of age, may order him to be privately whipped : or, if the offender be a girl, or in the case of any boy, the Magistrate deem any such punishment unfit, he may pass an order empowering the master of the apprentice or his agent to keep the offender in close confinement in his own house, [a] upon bread and water, or such other plain food as may be given without injury to the health of the apprentice, for a period not exceeding one month.

Power of Magistrate in case of complaint by master against apprentice.

16. Upon complaint of wilful and repeated ill-behaviour on the part of the apprentice, and on the demand of the master, the Magistrate may order the contract of apprenticeship to be cancelled whether or not the charge is proved ; but only with the consent of the apprentice and of his father or guardian, if the charge is not proved ; and such cancelling shall be with or without refund of the whole or part of any premium that may have been paid to the master on binding such apprentice, as the Magistrate seems fit on consideration of the case ; and all sums so refunded shall be applied under the direction of the Magistrate for behoof of the apprentice.

Cancelment of contract for misconduct of apprentice.

[a] Certain words have been omitted as directed by Notification No. 121 J, dated the 12th August 1875.

Sections 17-21

Appropriation of sum recovered for apprentice on cancellation of contract.

Limitation of complaint of master against apprentice ;

of apprentice against master.

Effect of death of master during apprenticeship.

Offer by representative of master to continue apprenticeship.

Offer to be certified on original contract and copies.

Maintenance of apprentice whose master dies.

17. The Magistrate may order any sum recovered for behoof of the apprentice on cancelling the contract to be either laid out in binding him to another master, or otherwise for his benefit, or to be paid to the person by whom any premium was paid when he was bound apprentice.

18. No Magistrate shall entertain a complaint on the part of a master against an apprentice under this Act, unless it be brought within one month after the cause of complaint arose ; [a] and no Magistrate shall entertain a complaint on the part of an apprentice against his master or the age of his master under this Act unless it be brought within three months after the cause of complaint arose. [a]

19. If the master of any apprentice shall die before the end of the apprenticeship, the contract of apprenticeship shall be thereby determined ; and a proportionate part, corresponding to the unexpired portion of the term, of any premium, which shall have been paid to such master on the binding of the apprentice to him, shall be returned by the [b] legal representatives [b] out of the estate of the deceased to the person or persons who shall have paid the same ; unless the [b] legal representatives [b] of the deceased master shall continue the business in which such apprentice shall have been employed, and shall, within three months from the death of the late master, make offer in writing to keep the apprentice on the terms of the original contract ; in which case the estate of the deceased shall be discharged from all liabilities on account of such premium.

20. If such offer to keep the apprentice shall be made as aforesaid, the same shall be fully expressed and certified by the [b] legal representatives [b] on the original contract of apprenticeship, and also on the office copies thereof, by the Magistrate [c] ; and the apprentice shall be bound to the [b] legal representatives [b] so keeping him for the remaining term of his apprenticeship.

21. Any apprentice bound under this Act, whose master shall die during the apprenticeship, shall be entitled to maintenance, for three months from and after the death of his master, out of the assets left by him : Provided that

[a] Certain words have been omitted as directed by Notification No. 121 J, dated the 12th August 1875.

[b-b] These words have been substituted as directed by Notification No. 12 J, dated the 12th August 1875.

[c] The words " or Registering Officer " have been omitted as directed by Notification No. 121 J, dated the 12th August 1875.

Sections 22-25—Schedule A.

during such three months such apprentice shall continue to live with, and serve as an apprentice, the [a] legal representatives [a] of such master, or such person as they shall appoint.

Apprentice to continue to serve.

22. (*Effect of insolvency of master during apprenticeship*). Omitted as directed by Notification No. 121 J., dated the 12th August 1875.

23. (*Persons amenable to jurisdiction of Magistrates' Courts*). Omitted as directed by Notification No. 121 J., dated the 12th August 1875.

24. An appeal shall lie from any order passed by any Magistrate [b] to the Court of Session to which such Magistrate is subordinate, provided the appeal is made within one month from the date of the order.

Appeal from orders of Magistrates.

25. In this Act the words "master," "owner," "person" and the pronoun "he" shall be understood to include several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless there is something in the context repugnant to such construction.

Interpretation of terms.

SCHEDULE A.

Form of Agreement.

This Agreement made the day of in the year
 between A. B. of and C. D. of
 witnesseth that the said A. B. doth this day bind E. F. a
 boy (or girl) of the age of years completed, son
 (or daughter) of the said A. B. (or otherwise describing the
 relation in which A. B. and E. F. stand), to dwell with and
 serve the said C. D. as an apprentice, from this day forth for
 years (in the case of a girl add, or until the time
 of her marriage, which shall first happen), during all which

[a-a] These words have been substituted as directed by Notification No. 121 J., dated the 12th August 1875.

[b] Certain words have been omitted as directed by Notification No. 121 J., dated the 12th August 1875.

Schedule A and B.

term the said apprentice shall duly and faithfully serve the said C. D. according to his (or her) skill and ability in all lawful business, and demean and behave himself (or herself) honestly, orderly and obediently, in all things toward the said C. D. and his (or her) family. And the said C. D. for himself (or herself) and his (or her) [a] legal representatives, [a] in consideration [of the premium or sum of paid by the said A. B. to the said C. D. the receipt whereof the said C. D. hereby acknowledges, and] of the faithful service of the said E. F., doth covenant and agree with the said A. B., his (or her) [a] legal representatives, [a] that he (or she) will teach or cause to be taught to the said E. F. in the best way and manner that he (or she) can, the trade (craft or employment) of a during the said term ; and will also, during the said term, find and allow unto the said apprentice good, wholesome and sufficient food, clothes, lodging, washing and all other things necessary, fit and reasonable for an apprentice : (and further, *here insert any special covenants*).

In witness whereof the parties have hereunto set their hands [b] the day and year above written.

A. B. [b]

C. D. [b]

SCHEDULE B.

Form of Order of Assignment.

(To be endorsed on the Agreement.)

Be it known to all men that on the day of in the year personally appeared before G. H., Magistrate of C. D., of with E. F., his (or her) apprentice, and J. K., of , and desired that the agreement of apprenticeship, whereby the said E. F., was bound to the said C. D., might be assigned and made over to the said J. K., and the said G. H., having satisfied himself, by personal examination of the said E. F., and by other lawful ways and

[a-a] These words have been substituted as directed by Notification No. 121 J, dated the 12th August 1875.

[b] Certain words and letters have been omitted as directed by Notification No. 121 J, dated the 12th August 1875.

Schedule B.

means, that such assignment is for the benefit of the said E. F. and is made with the consent of [the said E. F. and of] all persons whose consent thereunto by a law is required, doth allow such assignment; and the contract of apprenticeship whereby the said E. F. was on the day of in the year bound to the said C. D. as an apprentice to learn the trade (craft or employment of a shall henceforth endure unto, the end of the said term, as if the said J. K. had been originally party to the said deed, and had executed the same, in the place and stead of the said C. D., and shall be bound, for himself (or herself), his (or her) [a] legal representatives, [a] to fulfil the covenants by the said C. D. to be performed, and the said E. F. shall henceforth be bound unto the said J. K. in like manner as he (or she) was by the said agreement bound unto the said C. D.

C. D. E. F. J. K.

In witness whereof the said C. D., E. F. and J. K. have hereunto set their hands before me the day and year above written.

G. H.
Magistrate.

* [a-a] These words have been substituted as directed by Notification No. 121 J, dated the 12th August 1875.

ACT No. XIII OF 1859.

Notification by the Government of India, Foreign Department, No. 173, Judicial dated Simla, the 20th July 1864.

His Excellency the Viceroy and Governor-General in Council is pleased to extend the provisions of Act XIII of 1859 to the Town and Cantonment of Bangalore, and also to the Town and Cantonment of Mysore.

Notification by the Government of India, Foreign Department, No. 110, Revenue, dated Fort William, the 23rd March 1866.

Under the provisions of Section 5, the Governor-General in Council is pleased to extend Act XIII of 1859 to the British Province of Coorg.

His Excellency in Council is also pleased to direct that the provisions of the same Act shall be in force throughout the Province of Mysore.

ACT No. XIII OF 1859.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL
ON THE 4TH MAY 1859.)

*An Act to provide for the punishment of breaches of contract
by Artificers, Workmen and Labourers in certain cases.*

Preamble.

WHEREAS much loss and inconvenience sustained by manufacturers, tradesmen and others in the several Presidency-towns of Calcutta, Madras and Bombay, and in other places from fraudulent breach of contract on the part of artificers, workmen and labourers who have received money in advance on account of work which they have contracted to perform ; and whereas the remedy by suit in the Civil Courts for the recovery of damages is wholly insufficient, and it is just and proper that persons guilty of such fraudulent breach of contract should be subject to punishment ; It is enacted as follows :—

Complaint to
Magistrate if
workman
neglect to
perform work
for which he
has received
advance.

1. When any artificer, workman or labourer shall have received from any master or employer resident or carrying on business in any Presidency town , or in any Station of the Settlement of Prince of Wales' Island Singapore and Malacca or from any person acting on behalf of such master or employer, an advance of money on account of any work which he shall have contracted to perform, or to get performed by any other artificers, workmen and labourers, if such artificer, workman or labourer shall, wilfully and without lawful or reasonable excuse, neglect or refuse to perform or get performed such work according to the terms of his contract such master or employer or any such person as aforesaid may complain to a Magistrate of Police ; and the Magistrate shall thereupon issue a summons or a warrant, as he shall think proper for bringing before him such artificer, workman or labourer, and shall hear and determine the case.

Magistrate
may order
repayment
of advance
or performance
of
contract.

2. If it shall be proved to the satisfaction of the Magistrate that such artificer, workman or labourer has received money in advance from the complainant on account of any work, and has wilfully and without lawful or reasonable excuse neglected or refused to perform or get performed the same according to the terms of his contract, the Magistrate

Sections 3-5.

shall at the option of the complainant, either order such artificer, workman or labourer to repay the money advanced, or such part thereof as may seem to the Magistrate just and proper, or order him to perform, or get performed, such work according to the terms of his contract ;

And, if such artificer, workman or labourer shall fail to comply with the said order, the Magistrate may sentence him to be imprisoned with hard labour for a term not exceeding three months, or, if the order be for the repayment of a sum of money, for a term not exceeding three months, or until such sum of money shall be sooner repaid :

Penalty if
workman fail
to comply
with order.

Provided that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any civil remedy by action or otherwise which he might have had but for this Act.

3. When the Magistrate shall order any artificer, workman, or labourer to perform or get performed any work according to the terms of his contract, he may also at the request of the complainant require such artificer, workman or labourer to enter into a recognizance with sufficient security for the due performance of the order ; and, in default of his entering into such recognizance or furnishing such security to the satisfaction of the Magistrate, may sentence him to be imprisoned with hard labour for a period not exceeding three months.

Magistrate
may require
workman
to give
security for
due perfor-
mance of
order.

4. The word "contract," as used in this Act. shall extend to all contracts and agreements whether by deed, or written or verbal, and whether such contract be for a term certain, or for specified work, or otherwise.

To what
contracts
Act extends.

5. This Act may be extended by the Governor-General of India in Council, or by the Executive Government of any Presidency or place, to any place within the limits of their respective jurisdictions. In the event of this Act being so extended, the powers hereby vested in a Magistrate of Police shall be exercised by such officer or officers as shall be specially appointed by Government to exercise such powers.

Act may be
extended by
Government.



ACT No. X OF 1865.

*Notification by the Government of India, Foreign Department
No. 203, Judicial, dated Simla, the 23rd July 1868.*

His Excellency the Viceroy and Governor-General in Council is pleased to extend Act X of 1865 (The Indian Succession Act) to the Territories of Mysore. Under Section 332, His Excellency in Council is pleased to exempt from the operation of the Act all Native Christians in the Mysore Territories.

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72. No part rejected, if it can be reasonably construed.
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77. Words describing subject refer to property answering description at testator's death.
78. Power of appointment executed by general bequest.
79. Implied gift to objects of power in default of appointment.
80. Bequest to "heirs," etc., of particular person without qualifying terms.
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82. Bequest without words of limitation.
83. Bequest in alternative.
84. Effect of words describing a class added to bequest to a person.
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86. Construction of terms.
87. Words expressing relationship denote only legitimate relatives, or, failing such, relatives reputed legitimate.
88. Rules of construction where will purports to make two bequests to same person.
89. Constitution of residuary legatee.
90. Property to which residuary legatee entitled.
91. Time of vesting of legacy in general terms.
92. In what case legacy lapses.
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94. Effect of words showing testator's intention to give distinct shares.
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- 125. Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.
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 130. Bequest of sum certain where stocks, etc., in which invested, are described.
 131. Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.
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 133. Where enumerated articles not deemed specifically bequeathed.
 134. Retention, in form, of specific bequest to several persons in succession.
 135. Sale and investment of proceeds of property bequeathed to two or more persons in succession.
 136. Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

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137. Demonstrative legacy defined.
 138. Order of payment when legacy directed to be paid out of fund subject of specific legacy.

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139. Ademption explained.
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 141. Ademption of specific bequest of right to receive something from third party.
 142. Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.
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 144. Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.
 145. Ademption where stock, specifically bequeathed, does not exist at testator's death.
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- 147. Non-adeption of specific bequest of goods described as connected with certain place, by reason of removal.
- 148. When removal of thing bequeathed does not constitute ademption.
- 149. When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.
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- 185. Separate probate of codicil discovered after grant of probate. Procedure when different executors appointed by codicil.
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- 208. Probate of copy or draft of lost will.
- 209. Probate of contents of lost or destroyed will.
- 210. Probate of copy where original exists.
- 211. Administration until will produced.

(b) Grants for the use and Benefit of others having Right.

- 212. Administration, with will annexed, to attorney of absent execu-
tor.
- 213. Administration with, will annexed, to attorney of absent person,
who, if present, would be entitled to administer.
- 214. Administration to attorney of absent person entitled to administer
in case of intestacy.
- 215. Administration during minority of sole executor or residuary
legatee.
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legatees.
- 217. Administration for use and benefit of lunatic *jus habens*.
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- 219. Probate limited to purpose specified in will.
- 220. Administration, with will annexed, limited to particular purpose.
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- 222. Administration limited to suit.
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(d) Grants with Exception.

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(f) Grants of Effects unadministered.

- 229. Grant of effects unadministered.
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- 232. What errors may be rectified by Court.
- 233. Procedure where codicil discovered after grant of administration with will annexed.

(h) Revocation of Grants.

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- 236. District Judge's powers as to grant of probate and administration.
- 237. District Judge may order person to produce testamentary papers.
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- 239. When and how District Judge to interfere for protection of property.
- 240. When probate or administration may be granted by District Judge.
- 241. Disposal of application made to Judge of district in which deceased had no fixed abode.
- 242. Conclusiveness of probate or letters of administration.
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- 244. Petition for probate.
- 245. In what cases translation of will to be annexed to petition.
Verification of translation by person other than Court translator.
- 246. Petition for letters of administration.
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- 249. Punishment for false averment in petition or declaration.
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- 251. Caveats against grant of probate or administration.
- 252. Form of caveat.
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Form of such grant.
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Form of such grant.
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- 258. Time for grant of probate and administration.
- 259. Filing of original wills of which probate or administration with will annexed granted.
- 260. Grantee of probate or administration alone to sue, etc., until same revoked.
- 261. Procedure in contentious cases.
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- 268. Demands and rights of action of or against deceased survive to and against executor or administrator.
- 269. Power of executor or administrator to dispose of property.
- 270. Purchase by executor or administrator of deceased's property.
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275. Powers of married executrix or administratrix.

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276. As to deceased's funeral.

277. Inventory and account.

278. As to property of, and debts owing to, deceased.

279. Expenses to be paid before all debts.

280. Expenses to be paid next after such expenses.

281. Wages for certain services to be next paid, and then other debts.

282. Save as aforesaid, all debts to be paid equally and rateably.

283. Application of moveable property to payment of debts, where domicile not in British India.

284. Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.

285. Debts to be paid before legacies.

286. Executor or administrator not bound to pay legacies without indemnity.

287. Abatement of general legacies.

Executor not to pay one legatee in preference to another.

288. Non-abatement of specific legacy when assets sufficient to pay debts.

289. Right under demonstrative legacy, when assets, sufficient to pay debts and necessary expenses.

290. Rateable abatement of specific legacies.

291. Legacies treated as general for purpose of abatement.

PART XXXV.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

292. Executor's assent necessary to complete legatee's title.

293. Effect of executor's assent to specific legacy.

Nature of assent.

294. Conditional assent.

295. Assent of executor to his own legacy.

Implied assent.

296. Effect of executor's assent.

297. Executor when to deliver legacies.

PART XXXVI.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

298. Commencement of annuity when no time fixed by will.

299. When annuity, to be paid quarterly or monthly, first falls due.

300. Dates of successive payments when first payment directed to be made within given time, or on day certain.

Apportionment where annuitant dies between times of payment.

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PART XXXVII.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

- 301. Investment of sum bequeathed where legacy, not specific, given for life.
- 302. Investment of general legacy, to be paid at future time. Intermediate interest.
- 303. Procedure when no fund charged with, or appropriated to, annuity.
- 304. Transfer to residuary legatee of contingent bequest.
- 305. Investment of residue bequeathed for life, without direction to invest in particular securities.
- 306. Investment of residue bequeathed for life, with direction to invest in specified securities.
- 307. Time and manner of conversion and investment. Interest payable until investment.
- 308. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

PART XXXVIII.

OF THE PRODUCE AND INTEREST OF LEGACIES. .

- 309. Legatee's title to produce of specific legacy.
- 310. Residuary legatee's title to produce of residuary fund.
- 311. Interest when no time fixed for payment of general legacy.
- 312. Interest when time fixed.
- 313. Rate of interest.
- 314. No interest on arrears of annuity within first year after testator's death.
- 315. Interest on sum to be invested to produce annuity.

PART XXXIX.

OF THE REFUNDING OF LEGACIES.

- 316. Refund of legacy paid under Judge's orders.
- 317. No refund if paid voluntarily.
- 318. Refund when legacy has become due on performance of condition within further time allowed under section 124.
- 319. When each legatee compellable to refund in proportion.
- 320. Distribution of assets. Creditor may follow assets.
- 321. Creditor may call upon legatee to refund.
- 322. When legatee, not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.
- 323. When unsatisfied legatee must first proceed against executor, if solvent.
- 324. Limit to refunding of one legatee to another.
- 325. Refunding to be without interest.
- 326. Residue-after usual payments to be paid to residuary legatee.

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PART XL.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR
DEVASTATION.

327. Liability of executor or administrator for devastation :
328. for neglect to get in any part of property.

PART XLI.

MISCELLANEOUS.

- 329.)
330.) [*Repealed.*]
331. Succession to property of Hindus, etc., and certain will, intestacies
 and marriages not affected.
332. Power of Governor-General in Council to exempt any race, sect
 or tribe in British India from operation of Act.
 SCHEDULE. [*Repealed.*]

ACT No. X OF 1865.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL
ON THE 16TH MARCH 1865.)

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

Preamble.

Whereas it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India ; It is enacted as follows :—

PART I.

PRELIMINARY.

Short Title.

1. This Act may be cited as “ The Indian Succession Act, 1865.”

Act to constitute law of British India in cases of intestate or testamentary succession.

2. Except as provided by this Act or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context—

Number.

Words importing the singular number include the plural : words importing the plural number include the singular ;

Gender.

and words importing the male sex include females :

Interpretation.

“ Person.”

“ Person ” includes any company or association, or body of persons, whether incorporated or not :

“ Year.”

“ Year ” and “ month ” respectively mean a year and

“ Month.”

month reckoned according to the British Calendar :

“ Immoveable property.”

“ Immoveable property ” includes land, incorporeal tenements and things attached to the earth, or permanently fastened to anything which is attached to the earth :

“ Moveable property.”

“ Moveable property ” means property of every description except immoveable property :

“ Province.”

“ Province ” includes any division of British India having a Court of the last resort :

Sections 3-5.

“British India” means the territories which are or may become vested in Her Majesty or her successors by the Statute 21 and 22 Vic., Cap. 106, other than the Settlement of Prince of Wales’ Island, Singapore and Malacca. “British India.”

“District Judge” means the Judge of a principal Civil Court of original jurisdiction : “District Judge.”

“Minor” means any person who shall not have completed the age of eighteen years, and “minority” means the status of such person : “Minor.” “Minority.”

“Will” means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death : “Will.”

“Codicil” means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will : “Codicil.”

“Probate” means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator : “Probate.”

“Executor” means a person to whom the execution of the last will of a deceased person is, by the testator’s appointment, confided : “Executor.”

“Administrator” means a person appointed by competent authority to administer the estate of a deceased person when there is no executor : “Administrator.”

And in every part of the British India to which this Act shall extend, “Local Government” shall mean the person authorized by law to administer executive Government in such part ; and “Local Government”

“High Court” shall mean the highest Civil Court of appeal therein. “High Court.”

4. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried. Interests and powers not acquired nor lost by marriage.

PART II.

OF DOMICILE.

5. Succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death. Law regulating succession to deceased person’s immoveable and moveable property respectively.

Sections 5-10.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustration.

(a) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(b) A, an Englishman, having his domicile in France, dies in British India, and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

One domicile only affects succession to moveables.

Domicile of origin of person of legitimate birth.

6. A person can only have one domicile for the purpose of succession to his moveable property.

7. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled, or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

Domicile of origin of illegitimate child.

Continuance of domicile of origin.

Acquisition of new domicile.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

9. The domicile of origin prevails until a new domicile has been acquired.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's Civil or Military Service, or in the exercise of any profession or calling.

Illustration.

(a) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

Sections 11-14.

(b) A, whose domicile is in England, goes to Austria, and enters the Austrian service intending to remain in that service. A has acquired a domicile in Austria.

(c) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(d) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(e) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(f) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(g) A, having come to Calcutta under the circumstances stated in the last preceding illustration continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

11. Any person may acquire a domicile in British India by making and depositing in some office in British India (to be fixed by the Local Government) a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

Special mode of acquiring domicile in British India.

12. A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Domicile not acquired by residence as representative of foreign Government or as part of his family.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

Continuance of new domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Minor's domicile.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the Service of Her Majesty, or has

Sections 15-21.

set up, with the consent of the parent, in any distinct business.

Domicile
acquired by
woman on
marriage.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domi-
cile during
marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Minor's
acquisition
of new
domicile.

17. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

Lunatic's
acquisition
of new domi-
cile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Succession to
moveable
property in
British
India, in
absence of
proof of
domicile
elsewhere.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

PART III.

OF CONSANGUINITY.

Kindred or
consanguini-
ty.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

Lineal
consanguini-
ty.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Every generation constitutes a degree; either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Sections 22-24.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

Collateral
consanguini-
ty.

23. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother ;

Persons held
for purpose
of succession
to be simi-
larly related
to the de-
ceased.

nor between those who are related to him by the full blood, and those who are related to him by the half blood ;

nor between those who are actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

24. In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

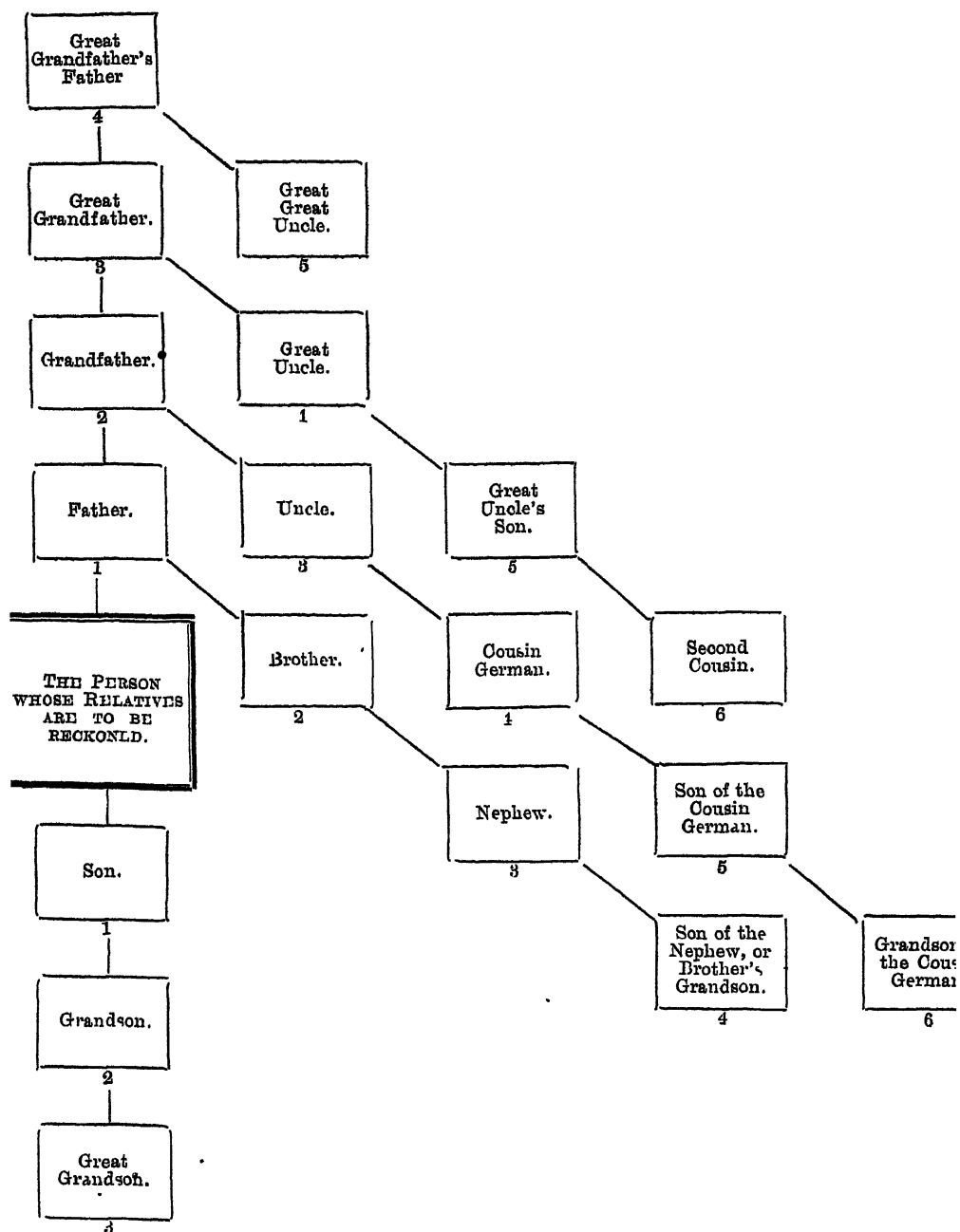
Mode of
computing
degrees of
kindred.

The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree ; there being one degree of ascent to the father, and another to the common ancestor, the grandfather ; and from him one of descent to the uncle, and another to the cousin-german ; making in all four degrees.

A grandson of the brother and a son of the uncle, *i.e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great uncle, for they are both in the sixth degree of kindred.

TABLE OF CONSANGUINITY.



Sections 25-28.

PART IV.

OF INTESTACY.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

As to what property deceased considered to have died intestate.

Illustrations.

(a) A has left no will. He has died intestate in respect of the whole of his property.

(b) A has left a will, whereby he has appointed B his executor ; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(c) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(d) A has bequeathed 1,000*l* to B and 1,000 the eldest son of C and has made no other bequest ; and has died leaving the sum of 2,000*l* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l*.

26. Such property devolves upon the wife or husband or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Devolution of such property.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband's estate.

27. Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained.

Where intestate has left widow and lineal descendants or widow and kindred only. or widow and no kindred.

If he has left no lineal descendant, but has left persons who are kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

28. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained : and, if he has left none who are of kindred to him, it shall go to the Crown.

Where intestate has left no widow, and where he has left no kindred.

Sections 29-33.

PART V.

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(a) Where he has left lineal Descendants.

Rules of
distribution.

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follows :—

Where
intestate has
left child or
children
only.

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

Where
intestate
has left no
child, but
grandchild
or grand-
children.

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(a) A has three children, and no more ; John, Mary and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grand-children shall have one-ninth.

(b) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(c) A has two children, and no more ; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

Where
intestate
has left only
great grand-
children or
remoter lineal
descendants.

32. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great grandchildren to him, or are all in a more remote degree.

Where
intestate
leaves lineal
descendants
not all in
same degree
of kindred
to him, and
those

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood

Sections 34—36.

in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and

through
whom the
more remote
descend are
dead.

one of such shares shall be allotted in respect of each of such deceased lineal descendants; and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively, if such parent or parents had survived the intestate.

Illustrations.

(a) A had three children, John, Mary and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(b) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great grandchildren.

(c) A has three children, John, Mary and Henry. John dies leaving four children, one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies, intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(b) Where the Intestate has left no lineal descendants.

34. Where an intestate has left no lineal descendants the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:—

Rules of
distribution
where
intestate has
left no lineal
descendants.

35. If the intestate's father be living, he shall succeed to the property.

Where
intestate's
father living.

36. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Where
intestate's
father dead
but his
mother,
brothers
and sisters
living.

Sections 37—39.

Illustration.

A dies, intestate, survived by his mother and two brothers of the full-blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary the sister of half-blood, takes one-fourth.

Where
intestate's
father dead
and his
mother, a
brother or
sister, and
children of
any deceased
brother or
sister
living.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child and children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half-blood, who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

Where
intestate's
father dead
and his
mother and
children of
any deceased
brother or
sister living.

38. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third and the children of George divide the remaining one-third equally between them.

Where
intestate's
father dead
but his
mother
living and no
brother,
sister,
nephew or
niece.

39. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother or sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

Sections 40—43.

40. Where the intestate has left neither lineal descendant nor father nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where
intestate has
left neither
lineal
descendant
nor father
nor mother.

41. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Where
intestate has
left neither
lineal descen-
dant, nor
parent nor
brother
nor sister.

Illustrations.

(a) A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(b) A the intestate, has left a great grandfather, or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(c) A, the intestate, left a great grandfather, an uncle and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(d) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

42. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may during his life have paid, given or settled to, or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

Children's
advancement
not to be
brought into
hotchpot.

PART VI.

OF THE EFFECT OF MARRIAGE AND MARRIAGE
SETTLEMENTS ON PROPERTY.

43. The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

Rights of
widower
and widow,
respectively.

Sections 44—47.

Effect of marriage between person domiciled and one not domiciled in British India.

44. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage, any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

Settlement of minor's property in contemplation of marriage.

45. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or, if he be dead or absent from British India, with the approbation of the High Court.

PART VII.

OF WILLS AND CODICILS.

Persons capable of making wills.

46. Every person of sound mind and not a minor may dispose of his property by will.

Explanation.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(a) A can perceive what is going on in his immediate neighbourhood and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(b) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(c) A being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes his will. This is a valid will.

Testamentary guardian.

47. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

Sections 48—50.

48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Will obtained
by fraud,
coercion or
importunity.

Illustrations.

(a) A, falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his, A's, favour; such will has been obtained by fraud, and is invalid.

(b) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(c) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(d) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B. in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(e) A, being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(f) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(g) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(h) A, with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

Will may be
revoked or
altered.

PART VIII.

OF THE EXECUTION OF UNPRIVILEGED WILLS.

50. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea must execute his will according to the following rules:—

Execution
of unprivi-
leged wills.

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Sections 51-52.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

51. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX.

OF PRIVILEGED WILLS-

Privileged will.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in the fifty-third section. Such wills are called privileged wills.

Illustrations.

(a) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(b) A, is at sea in a merchant ship, of which he is the purser. He is a mariner, and being at sea can make a privileged will.

(c) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(d) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(e) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

Section 53.

(f) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

53. Privileged wills may be in writing, or may be made by word of mouth. The execution of them shall be governed by the following rules :—

Mode of
making and
rules for ex-
ecuting, pri-
vileged wills.

First.—The will may be written wholly by the testator with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his life-time, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

Sections 54—57.

PART X.

Of the Attestation, Revocation, Alteration and Revival of Wills.

Effect of gift
to attesting
witness.

54. A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband :

but the bequest or appointment shall be void so far as concerns the person so attesting or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

Witness not
disqualified
by interest
or by being
executor.

55. No person by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Revocation
of will by
testator's
marriage.

56. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment, is exercised would not, in default of such appointment, pass to his or her executor, or administrator, or to the person entitled in case of intestacy.

Power of
appointment
defined.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Revocation
of unprivi-
leged will or
codicil.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

•
Illustrations.

(a) A has made an unprivileged will ; afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(b) A has made an unprivileged will. Afterwards, A, being entitled to make a privileged will, makes a privileged will which purports to revoke his unprivileged will. This is revocation.

•

Sections 58—61.

58. No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Effect of
obliteration,
interlineation
or alteration,
in unprivileg-
ed.

59. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any Act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Revocation
of privileged
will or
codicil.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same;

Revival of
unprivileged
will.

and when any will or codicil, which shall be partly revoked, and afterwards wholly revoked, shall be revived such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

Extent of
revival of
will or codicil
partly
revoked and
afterwards
wholly re-
voked.

PART XI.

OF THE CONSTRUCTION OF WILLS.

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording

Wording of
will.

Sections 62-63.

shall be such that the intention of the testator can be known therefrom.

Enquiries to determine questions as to object or subject of will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a court must inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(a) A, by his will, bequeaths 1,000 rupees to his eldest son, or to his youngest grandchild, or to his cousin Mary. A court may make inquiry in order to ascertain to what person the description in the will applies.

(b) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(c) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or misdescription of object.

63. Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of the legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(a) A, bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b) A, bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(d) The testator gives his residuary estate to be divided among "his seven children," and, proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

Sections 64—66.

(e) The testator, having six grandchildren, makes a bequest to "his six grandchildren," and, proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(f) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context. When words may be supplied.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect. Rejection of erroneous particulars in description of subject.

Illustration.

(a) A, bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, but had no marsh lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh lands of the testator lying in L shall pass by the bequest.

(b) The testator bequeaths to A "his zamindari of Rampore." He had an estate at Rampore, but it was a taluk and not a zamindari. The taluk passes by this bequest.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply. When part of description may not be rejected as erroneous.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the sixty-fifth section are to be considered as struck out of the will.

Illustrations.

(a) A bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, some of

Sections 67—69.

which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh lands lying in L as were in the occupation of X.

(b) A bequeaths to B "his marsh lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh lands lying in L as were in the occupation of X shall alone pass by the bequest.

Extrinsic evidence admissible in case of latent ambiguity.

67. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(a) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b) A, by his will, leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

68. Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(a) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to his "before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and the evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the seventy-sixth section.

(b) A, bequeaths 1,000 rupees to _____, leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(c) A, bequeaths to B _____ rupees, or "his estate of _____." Evidence is not admissible to show what sum or what estate the testator intended to insert.

Meaning of clause to be collected from entire will.

69. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

Sections 70—73.

Illustrations.

(a) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(b) Where a testator, having an estate one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

70. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

When words may be understood in restricted sense, and when in sense wider than usual.

Illustrations.

(a) A testator gives to A "his farm in the occupation of B," and to C "all his marsh lands in L." Part of the farm in the occupation of B consists of marsh lands in L, and the testator also has other marsh lands in L. The general words, "all his marsh lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh lands in L.

(b) The testator (a sailor on ship board) bequeathed to his mother his gold ring, buttons and chest of clothes, and to his friend A (a shipmate) his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

Which of two possible constructions preferred.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

No part rejected, if it can be reasonably construed.

73. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Interpretation of words repeated in different parts of will.

Sections 74—79.

Testator's
intention
to be
effectuated
as far as
possible.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Illustration.

The testator by a will made on his death-bed bequeathed all his property to C. D. for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under the hundred and fifth section, but it shall take effect so far as regards the gift to C. D.

The last of
two inco-
sistent
clauses
prevails.

75. Where two clauses or gifts in a will are irreconcilable so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(a) The testator by the first clause of his will leaves his estate of Ramnagar "to A," and by the last clause of his will leaves it "to B and not to A." B shall have it.

(b) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or be-
quest void
for uncer-
tainty.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

Illustration.

If a testator says—"I bequeath goods to A;" or "I bequeath to A;" or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' wheat,' 'oil.'" or the like, without saying how much, this is void.

Words
describing
subject refer
to property
answering
description
at testator's
death.
Power or
appointment
executed by
general
bequest.

77. The description contained in a will of property the subject of gift shall unless a contrary intention appear by the will be deemed to refer to and comprise the property answering that description at the death of the testator.

78. Unless a contrary intention shall appear by the will a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper and shall operate as an execution of such power;

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend which he may have power to appoint by will to any object he may think proper and shall operate as an execution of such power.

Implied gift
to objects
of power
in default of
appointment.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint

Sections 80-81.

or for the benefit of certain objects in such proportions as a specified person shall appoint and the will does not provide for the event of no appointment being made; if the power given by the will be not exercised the property belongs to all the objects of the power in equal shares.

Illustration.

A, by his will, bequeaths a fund to his wife for her life, and direct^s that at her death it shall be divided among his children in such proportion^s as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

80. Where a bequest is made to the "heirs" or "right heirs" or "relations," or "nearest relations," or "family," or "kindred," or nearest of kin," or "next of kin" of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Bequest to "heirs," &c., of particular person without qualifying terms.

Illustrations.

(a) A leaves his property "to his own nearest relations," The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(b) A bequeaths 10,000 rupees "to B for his life, and after the death of B to his own right heirs," The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(c) A leaves his property to B, but, if B dies before him, to B's next of kin: B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(d) A leaves 10,000 rupees "to B for his life, and after his decease to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

81. Where a bequest is made to the "representatives," or "legal representatives," or personal representatives," or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if had belonged to such person, and he had died intestate in respect of it.

Bequest to "representatives," &c., of particular person.

*Sections 82—84.**Illustration.*

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B, is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid : if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

Bequest
without
words of
limitation.

82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

Bequest in
alternative.

83. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect ; but if he be then dead the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(a) A bequest is made to A or to B. A survives the testator. B takes nothing.

(b) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(c) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(d) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator the bequest to A's nearest of kin takes effect.

(f) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(g) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

Effect of
words de-
scribing a
class added to
bequest to a
person.

84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Illustrations.

(a) A bequest is made—
to A and his children,

Sections 85-86.

to A and his children by his present wife,
 to A and his heirs,
 to A and his heirs of his body,
 to A and the heirs male of his body,
 to A and the heirs female of his body,
 to A and his issue,
 to A and his family,
 to A and his descendants,
 to A and his representatives,
 to A and his personal representatives,
 to A, his executors and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(b) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(c) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Bequest to class of persons under general description only.

86. The word "children" in a will applies only to lineal descendants in the first degree;

Construction of terms

the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children," or "grandchildren," are spoken of;

the words "nephews" and "nieces" apply only to children of brothers or sisters;

the words "cousins," or "first cousins," or "cousins-german," apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of;

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of;

the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half blood.

Sections 87-88.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.

Words expressing relationship denote only legitimate relatives, or, failing such, relatives reputed legitimate.

87. In the absence of any intimation to the contrary in the will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Illustrations.

(a) A, having three children, B, C and D, of whom B and C are legitimate, and D is illegitimate, leaves his property to be equally divided among his "children." The property belongs to B and C in equal shares, to the exclusion of D.

(b) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(c) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(d) A leaves a legacy to "the children of B." B is dead, and has left none but illegitimate children. All those who had, at the date of the will, acquired the reputation of being the children of B are objects of the gift.

(e) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(g) A makes a bequest in favour of his child to be born of a woman who never becomes his wife. The bequest is void.

(h) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

Rules of construction where will purports to make two bequests to same person.

88. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will:—

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to

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the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies, of unequal amount, are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word “will” does not include a codicil.

Illustrations.

(a) A, having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words “I bequeath my ten shares in the Bank of Bengal to B.” After other bequests, the will concludes with the words “and I bequeath my ten shares in the Bank of Bengal to B.” B is entitled simply to receive A’s ten shares in the Bank of Bengal.

(b) A, having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(c) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(d) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(e) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will, he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(f) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(g) A, by his will, bequeaths “500 rupees to B because she was his nurse” and in another part of the will bequeaths 500 rupees to B “because she went to England with his children.” B is entitled to receive 1,000 rupees.

(h) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees, B is entitled to both legacies.

(i) A, by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that

Constitu-
tion of resi-
duary legatee

Sections 90—92.

the person designated shall take the surplus or residue of of his property.

Illustrations.

(a) A makes her will, consisting of several testamentary papers, in one of which are contained the following words :—" I think there will be something left, after all funeral expenses, etc., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(b) A makes his will, with the following passage at the end of it :—" I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(c) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

Property to which residuary legatee entitled.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

A, by his will, bequeaths certain legacies, one of which is void under the hundred and fifth section, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

Time of vesting legacy in general terms.

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator and if he dies without having received it, it shall pass to his representatives.

In what case legacy lapses.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In order to entitle the representatives of the legatee to receive the legacy it must be proved that he survived the testator. •

Illustrations.

(a) The testator bequeaths to B " 500 rupees which B owes him." B dies before the testator ; the legacy lapses.

(b) A bequest is made to A and his children. A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

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(c) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(d) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(e) A sum of money is bequeathed to A on his completing his eighteenth year, and, in case he should die before he completes his eighteenth year, and, in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the life time of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(f) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Legacy does not lapse if one of two joint legatees die before testator.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testators' property.

Effect of words showing testators' intention to give distinct shares.

Illustration.

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

When lapsed share goes as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any child or other lineal descendant of the testator, and the legatee shall die in the life-time of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

Illustration.

A makes his will, by which he bequeaths a sum of money to his son

Sections 97-98.

B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D

Bequest to A for benefit of B does not lapse by A's death.

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Survivorship in case of bequest to described class.

98. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(a) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D, and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(b) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

(c) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(d) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(e) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E and the representatives of C, in equal shares.

(f) A bequeaths 1,000 rupees to B for life, and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

Section 99.

(b) A bequeaths 1,000 rupees to "all the children born or to be born" of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the afterborn child of B.

(h) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

PART XII.

OF VOID BEQUESTS.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Bequest to person by particular description who is not in existence at testator's death.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

Illustrations.

(a) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator, B has no son. The bequest is void.

(b) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death, the legacy goes to C's son.

(c) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B, a son, named D, is born to C. D dies, then, B dies. The legacy goes to the representative of D.

(d) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(e) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

Sections 100-101.

Bequest to person not in existence at testator's death, subject to prior bequest.

100. Where a bequest is made to a person not in existence at the time, of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(a) Property is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(b) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(c) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life, and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(d) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of some thing which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rule against perpetuity.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations.

(a) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of the sons of B as shall first

Section 102.

attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25 may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B and the minority of the sons of B. The bequest after B's death is void.

(b) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(c) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided among such of B's children as shall attain the age of 18, but that if no child of B shall attain that age, the fund shall go to C. Here the time, for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(d) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.

Request to a class some of whom may come under rules in Sections 100 and 101.

Illustrations.

(a) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death, and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(b) A fund is bequeathed to A for his life, and after his death to B, C, D and all other children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (a). The mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

Sections 103-104.

Bequest to take effect on failure of bequest void under Sections 100, 101 or 102.

103. Where a bequest is void by reason of any of the rules contained in the three last preceding sections, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(a) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under Section 101. The bequest to B is void.

(b) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and, if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under Section 101. The bequest to B is void.

Effect of direction for accumulation.

104. A direction to accumulate the income arising from any property shall be void ; and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death.

And at the end of the year such property and income shall be disposed of, respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(a) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal together with the accumulations shall then be divided between A, B and C. A, B and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(b) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(c) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

Sections 105-106.

(d) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulations shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(e) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated not by reason of the direction contained in the will, but in consequence of B's minority.

105. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Bequest to religious or charitable uses.

Illustration.

A having a nephew makes a bequest by a will not executed nor deposited as required—

- for the relief of poor people;
- for the maintenance of sick soldiers;
- for the erection or support of a hospital;
- for the education and preferment of orphans;
- for the support of scholars;
- for the erection or support of a school;
- for the building and repairs of a bridge;
- for the making of roads;
- for the erection or support of a church;
- for the repairs of a church;
- for the benefit of ministers of religion;
- for the formation or support of a public garden.

All these bequests are void

PART XIII.**OF THE VESTING OF LEGACIES.**

106. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed a right to receive it at the proper time shall, unless a contrary intention appears by the will become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy.

Date of vesting of legacy when payment or possession postponed.

And in such cases the legacy is from the testator's death said to be vested in interest.

Section 107.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(a) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(b) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(c) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(d) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(e) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(f) A fund is bequeathed to A, B and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B and C, subject to be divested in case A, B and C, shall all die under 18, and, upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(a) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18 or one of them attains that age.

Date of vesting when legacy contingent upon specified uncertain event.

Section 108.

(b) A sum of money is bequeathed to A "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(c) An estate is bequeathed to A for life, and after his death to B, if B shall then be living; but if B shall not be then living, to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(d) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(e) A legacy is bequeathed to A when he shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(f) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(g) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(h) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(i) A leaves his farm of Sultanpur Khurd to B, if B shall convey his own farm of Sultanpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(j) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(k) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(l) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(m) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Vesting of interest in bequest to such members of a class as shall have attained particular age

Sections 109—111.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

PART XIV.

OF ONEROUS BEQUESTS.

Onerous
bequest.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Illustration.

A having share in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

One of two
separate and
independent
bequests to
same person
may be ac-
cepted, and
the other
refused.

110. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration.

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART XV.

OF CONTINGENT BEQUESTS.

Bequest
contingent
upon specifi-
ed uncertain
event, no
time being
mentioned
for its
occurrence.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations.

(a) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(b) A legacy is bequeathed to A, and in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

Sections 112—114.

(c) A legacy is bequeathed to A when and if he attains the age of 18, and in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(d) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning in case B shall die without children during the lifetime of A.

(e) A legacy is bequeathed to A for life, and after this death to B and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

112. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Bequest to such of certain persons as shall be surviving at some period not specified.

Illustrations.

(a) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator and B survives the testator, it goes to B.

(b) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(c) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(d) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

PART XVI.**OF CONDITIONAL BEQUESTS.**

113. A bequest upon an impossible condition is void.

Bequest upon impossible condition.

Illustrations.

(a) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(b) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

114. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Bequest upon illegal or immoral condition.

*Sections 115-116.**Illustrations.*

(a) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(b) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

Fulfilment of condition precedent to vesting of legacy.

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations.

(a) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(b) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(c) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(d) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(e) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(f) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(g) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

Bequest to A, and, on failure of prior bequest, to B.

116. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(a) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

Sections 117-118.

(b) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and, if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

117. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

When second bequest not to take effect on failure of first.

Illustration.

A makes a bequest to his wife, but, in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.*

118. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or, that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

Bequest over, conditional upon the happening or not happening of specified uncertain event.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

Illustrations.

(a) A sum of money is bequeathed to A, to be paid to him at the age of 18, and, if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A shall die under 18.

(b) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(c) A sum of money is bequeathed to A for life, and after his death to B, but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(d) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one half of the money, and the representative of B takes the other half.

(e) A bequeaths to B the interest of a fund for life, and directs the fund to be divided, at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

Sections 119—121.

Condition
must be strict
ly fulfilled.

119. An ulterior bequest of the kind contemplated by the last preceding section cannot take effect, unless the condition is strictly fulfilled.

Illustrations.

(a) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(b) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(c) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18, or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

Original
bequest not
affected by
invalidity
of second.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Illustrations.

(a) An estate is bequeathed to A for his life, with a condition superadded that, if he shall not on a given day walk 10 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(b) An estate is bequeathed to A for her life, and, if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(c) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death had not a son. The bequest over is void under section 32, and A is entitled to the estate during his life.

Bequest con-
ditioned that
it shall cease
to have effect
in case speci-
fied uncer-
tain event
shall happen
not happen.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood. He loses his life-interest in the estate.

(b) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c) An estate is bequeathed to A, provided that, if he shall not go to England within three years after testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

Sections 122—124.

(d) An estate is bequeathed to A, with a proviso that, if she becomes a nun she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(e) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh section.

Such condition must not be invalid under section 107.

123. Where a bequest is made with a condition superadded that unless the legatee shall perform a certain act, the subject matter of the bequest shall go to another person, or the bequest shall cease to have effect; but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject matter to go over.

Illustrations.

(a) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b) A bequest is made to A with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. Where the will requires an act to be performed by the legatee within a specified time either as a condition to be fulfilled before the legacy is enjoyed or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person or the bequest is to cease to have effect; the act must be performed within the time specified unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Performance of condition precedent or subsequent within specified time. Further time in case of fraud.

Sections 125—127.

PART XVII.

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION
OR ENJOYMENT.

Direction
that fund be
employed
in particular
manner
following
absolute
bequest
of same to or
for benefit
of any per-
son.

125. Where a fund is bequeathed absolutely to or for the benefit of any person but the will contains a direction that it shall be applied or enjoyed in a particular manner the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to purchase a commission in the Army for A, or to place A, in any business. A chooses to receive the legacy in money. He is entitled to do so.

Direction
that mode of
enjoyment
of absolute
bequest is
to be restric-
ted, to secure
specified
benefit for
legatee.

126. Where a testator absolutely bequeaths a fund so as to sever it from his own estate but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Illustrations.

(a) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(b) A directs his trustees to raise a sum of money for his daughter and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

Bequest of a
fund for cer-
tain purposes,
some of which
cannot be
fulfilled.

127. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Illustrations

(a) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children; the son dies without having ever had a child. The fund after the son's death, belongs to the estate of the testator.

Sections 128-129.

(b) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART XVIII.

OF BEQUESTS TO AN EXECUTOR.

128. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

Legatee named as executor cannot take unless he shows intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

PART XIX.

OF SPECIFIC LEGACIES.

129. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Specific legacy defined.

Illustrations.

- (a) A bequeaths to B —
- “the diamond ring presented to him by C.”
 - “his gold chain.”
 - “a certain bale of wool.”
 - “a certain piece of cloth.”
 - “all his household goods which shall be in or about his dwelling-house in M street, in Calcutta, at the time of his death.”
 - “the sum of 1,000 rupees in a certain chest.”
 - “the debt which B owes him.”
 - “all his bills, bonds and securities belonging to him lying in his lodgings in Calcutta.”
 - “all his furniture in his house in Calcutta.”
 - “all his goods on board a certain ship then lying in the river Hugli.”
 - “2,000 rupees which he has in the hands of C.”
 - “the money due to him on the bond of D.”
 - “his mortgage on the Rampore factory.”
 - “one-half of the money owing to him on his mortgage of Rampore factory.”
 - “1,000 rupees, being part of a debt due to him from C.”

Section 129.

- "his capital stock of 1,000*l.* in East India Stock :"
- "his promissory notes of the Government of India, for 10,000 rupees in their 4 per cent loan :"
- "all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company :"
- "all the wine which he may have in his cellar at the time of his death :"
- "such of his horses as B may select :"
- "all his shares in the Bank of Bengal :"
- "all the shares in the Bank of Bengal which he may possess at the time of his death :"
- "all the money which he has in the 5½ per cent loan of the Government of India :"
- "all the Government securities he shall be entitled to at the time of his decease :"

Each of these legacies is specific.

(b) A, having Government promissory notes for 10,000 rupees, bequeaths to his executor "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B. The legacy is specific.

(c) A, having property at Benares, and also in other places, bequeaths to B all his property at Benares. The legacy is specific.

(d) A bequeaths to B—

- his house in Calcutta :
- his zamindari of Rampore :
- his taluk of Ramnagar :
- his lease of the Indigo factory of Salkya :
- an annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(e) A by his will charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D. Each of these bequests is specific.

(f) A bequeaths a sum of money—

- to buy a house in Calcutta for B :
- to buy an estate in zillah Faridpore for B :
- to buy a diamond ring for B :
- to buy a horse for B :
- to be invested in shares in the Bank of Bengal for B :
- to be invested in Government securities for B :

A bequeaths to B—

- "a diamond ring :"
- "a horse :"
- "10,000 rupees worth of Government securities :"
- "an annuity of 500 rupees :"
- "2,000 rupees, to be paid in cash :"
- "so much money as will produce 5,000 rupees 4 per cent. Government securities."

These bequeaths are not specific.

Sections 130—134.

(g) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England. No one of these legacies is specific.

130. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds or securities in which it is invested are described in the will.

Bequest of sum certain where stocks, etc., in which invested are described.

Illustration.

A bequeaths to B—

“10,000 rupees of his funded property :”

“10,000 rupees of his property now invested in shares of the East Indian Railway Company :”

“10,000 rupees at present secured by mortgage of Rampore factory.”

No one of these legacies is specific.

131. Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Bequest of stock where testator had at date of will equal or greater amount of stock of same kind.

Illustration.

A bequeaths to B 5,000 rupees five per cent Government securities. A had at the date of the will five per cent Government securities for 5,000 rupees. The legacy is not specific.

132. A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Bequest of money where not payable until part of testator's property disposed of in certain way.

Illustration.

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as A's property in India shall be realized in England. The legacy is not specific.

133. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specially bequeathed.

When enumerated articles not deemed specifically bequeathed.

134. Where property is specially bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Retention, in form, of specific bequest to several persons in succession.

Sections 135—137.

Illustrations.

(a) A, having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although, if B lives for 15 years, C can take nothing under the bequest.

(b) A, having an annuity during the life of B, bequeaths it to C for his life, and after C's death to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

135. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Illustration.

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's death to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX.

OF DEMONSTRATIVE LEGACIES.

Demonstrative legacy defined.

137. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that

where specified property is given to the legatee, the legacy is specific ;

where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(a) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt

Sections 138-139.

due to him from W. The legacy to B is specific ; the legacy to C is demonstrative."

(b) A bequeaths to B.

" 10 Bushels of the corn which shall grow in his field of green acre : "

" 80 chests of the indigo which shall be made at his factory of Rampore : "

" 10,000 rupees out of his five per cent. promissory notes of the Government of India : "

an annuity of 500 rupees " from his funded property : "

" 1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluk of Ramnagar.

A bequeaths to B---

" 10,000 rupees out of his estate at Ramnagar," or charges it on his estate at Ramnagar :

" 10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

138. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

A bequeaths to B 1,000 rupees being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees ; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

PART XXI.

OF ADEMPMENT OF LEGACIES.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed ; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

Adeemption explained.

Illustrations.

(a) A bequeaths to B—

" the diamond ring presented to him by C : "

" his gold chain : "

Sections 140—142.

“certain bale of wool :”

“a certain piece of cloth :”

“all his household goods which shall be in or about his dwelling-house in M Street in Calcutta, at the time of his death.”

A, in his lifetime,—

sells or gives away the ring :

converts the chain into a cup :

converts the wool into cloth :

makes the cloth into a garment :

takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(b) A bequeaths to B—

“the sum of 1,000 rupees in a certain chest :”

“all the horses in his stable.”

At the death of A, no money is found in the chest, and no horses in the stable.

The legacies are adeemed.

(c) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

Non-adeemption of demonstrative legacy.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

Adeemption of specific bequest of right to receive something from a third party.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Illustrations.

(a) A bequeaths to B

“the debt which C owes him :”

“2,000 rupees which he has in the hands of D :”

“the money due to him on the bond of E :”

“his mortgage on the Rampore factory.”

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(b) A bequeaths to B “his interest in certain policies of life assurance.” A in his lifetime receives the amount of the policies. The legacy is adeemed.

Adeemption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an adeemption of the legacy to the extent of the sum so received.

Illustration.

A bequeaths to B “the debt due to him by C.” The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by adeemption, so far as regards the 5,000 rupees received by A.

Sections 143—146.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Ademption pro tanto by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund, and the remainder of the fund insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund remainder insufficient to pay both legacies.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

145. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Ademption where stock specifically bequeathed does not exist at testator's death.

Illustration.

A bequeaths to B—

“his capital stock of 1,000*l* in East India Stock:”

“his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan.”

A sells the stock and the notes. The legacies are adeemed.

146. Where stock which has been specifically bequeathed does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Ademption pro tanto where stock, specifically bequeathed, exists in part only at testator's death.

Illustration.

A bequeaths to B “his 10,000 rupees in the 5½ per cent loan of the Government of India.” A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

Sections 147—149.

Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.

147. A specific bequest of goods under a description connecting them with a certain place, is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustrations.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

When removal of thing bequeathed does not constitute ademption.

148. The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

A bequeaths to B all the bills, bonds and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.

149. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption;

but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

Sections 150—154.

150. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Change by operation of law of subject of specific bequest between date of will and testator's death.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent loan of the Government of India." The securities for the 5½ per cent loan are converted during A's lifetime into 5 per cent stock.

A bequeaths to B the sum of 2,000*l* invested in Consols in the names of trustees for A. The sum of 2,000*l* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power, under his marriage settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

151. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Change of subject without testator's knowledge.

Illustration.

A bequeaths to B "all his three per cent. Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

152. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

153. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

Stock specifically bequeathed, sold but replaced and belonging to testator at his death.

PART XXII.

OF THE PAYMENT OF LIABILITIES IN RESPECT OF
THE SUBJECT OF A BEQUEST.

154. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien, or incumbrance, created by the testator himself or by any person

Non-liability of executor to exonerate specific legatees.

Sections 155-156.

under whom he claims, then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

(a) A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executor's, if the state of the testator's assets will allow them, to allow B to redeem the ring

(b) A bequeaths to B a zamindari, which at A's death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion
of testator's
title to things
bequeathed
to be at cost
of his estate.

155. Where any thing is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(a) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(b) A having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

Exoneration
of legatee's
immoveable
property for
which land
revenue or
rent payable
periodically.

156. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

Sections 157-158.

157. In the absence of any direction in the will, where there is a specific bequest of stock in a Joint Stock Company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee be borne by such estate.

Exoneration
of specific
legatee's
stock in Joint
Stock Com-
pany.

But if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accepts the bequest.

Illustrations.

(a) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(b) A has agreed to take 50 shares in an intended Joint Stock Company and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(c) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(d) A bequeaths to B his shares in a Joint Stock Company. B accepts the bequest. Afterwards the affairs of the Company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(e) A is the owner of ten shares in a Railway Company. At a meeting held during his lifetime, a call is made of 3*l.* per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Bequest of
thing describ-
ed in general
terms,

Illustrations.

(a) A bequeaths to C a pair of carriage-horses, or a diamond ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

Sections 159-160.

(b) A bequeaths to B "his pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

PART XXIV.

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

Bequest of interest or produce of fund.

159. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Illustrations.

(a) A bequeaths to B the interest of his 5 per cent promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's 5 per cent promissory notes of the Government of India.

(b) A bequeaths the interest of his $5\frac{1}{2}$ per cent promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life and C is entitled to the notes upon B's death.

(c) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.

OF BEQUESTS OF ANNUITIES.

Annuity created by will payable for life only unless contrary intention appears by will.

160. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(a) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(b) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

Sections 161—165.

161. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

Illustrations.

(a) A by his will directs that his executors shall out of his property purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(b) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

Abatement of annuity.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

Where gift of annuity, and residuary gift, whole annuity to be first satisfied.

PART XXVI.

OF LEGACIES TO CREDITORS AND PORTIONERS.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Creditor *prima facie* entitled to legacy as well as debt.

165. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Child *prima facie* entitled to legacy as well as portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended

Sections 166—169.

marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

No ademption by subsequent provision for legatee.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by a settlement or otherwise for the legatee.

Illustrations.

(a) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(b) A bequeaths 40,000 rupees to B, his orphan niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.

OF ELECTION.

Circumstances in which election takes place.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

Devolution of interest relinquished by owner.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Testator's belief as to his ownership immaterial.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Illustrations.

(a) The farm of Sultanpur was the property of C. A bequeathed it to B giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(b) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B, B must elect to give up the jewel, or to lose the estate.

Sections 170—172.

(c) A bequeaths to B 1,000 rupees, and to C an estate which will under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(d) A. a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Bequest for man's benefit how regarded for purpose of election.

Illustration.

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultanpur Buzurg to his own executors with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will or keep his farm, of Sultanpur Khurd in opposition to it.

171. A person taking no benefit directly under the will but deriving a benefit under it indirectly, is not put to his election.

Person deriving benefit indirectly not put to election.

Illustration.

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate, shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

172. A person who in his individual capacity takes a benefit under the will, may in another character elect to take in opposition to the will.

Person taking in individual capacity, under will, may in other character elect to take in opposition.

Illustration

The estate of Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last Rules.—Where a particular gift is expressed in the will to be in lieu of something belonging

Sections 173—175.

to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. A by his will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

When acceptance of benefit given by will constitutes election to take under will.

173. Acceptance of a benefit given by the will, constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations.

(a) A is owner of an estate called Sultanpur Khurd, and has life interest in another estate called Sultanpur Burzug, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzurg to C. B, in ignorance of his own right to the estate of Sultanpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzurg to C.

(b) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

Presumption arising from enjoyment by legatee for two years.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Confirmation of bequest by act of legatee.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed of the bequest the estate to B.

Sections 176—178.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election.

When testator's representatives may call upon legatee to elect.

And if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Effect of non-compliance.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

Postponement of election in case of disability.

PART XXVIII.

OF GIFTS IN CONTEMPLATION OF DEATH.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

Property transferable by gift made in contemplation of death.

A gift is said to be made in contemplation of death where a man who is ill and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

When gift said to be made in contemplation of death.

Such a gift may be resumed by the giver.

It does not take effect if he recovers from the illness during which it was made ; nor if he survives the person to whom it was made.

Such gift resumable. When it fails.

Illustrations.

(a) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

a watch :

a bond granted by C to A :

a Bank Note :

a promissory note of the Government of India endorsed in blank :

a bill of exchange endorsed in blank :

certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch :

the debt secured by C's bond :

the bank-note :

the promissory note of the Government of India :

the bill of exchange :

the money secured by the mortgage-deeds.

Sections 179—183.

(b) A, being ill and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents or to A's goods of bulk in the warehouse.

(c) A, being ill and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.

• OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character
and property
of executor
or adminis-
trator as
such.

179. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Administra-
tion with
copy annexed
of authenti-
cated copy
of will pro-
ved abroad.

180. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only
to appointed
executor.

181. Probate can be granted only to an executor appointed by the will.

Appointment
express or
implied.

182. The appointment may be express or by necessary implication.

Illustrations.

(a) A wills that C be his executor if B will not; B is appointed executor by implication.

(b) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within named C be not living, I do constitute and appoint B my whole and executrix." C is appointed executrix by implication.

(c) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to
whom pro-
bate cannot
be granted.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Sections 184—192.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Grant of probate to several executors simultaneously at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

185. If a codicil be discovered after the grant of probate separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Separate probate of codicil discovered after grant of probate.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Procedure when different executors appointed by codicil.

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

187. No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the Province shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration under the one hundred and eightieth section.

Right as executor or legatee when established.

188. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

To whom administration may not be granted.

190. No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

Right to intestate's property when established.

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

192. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Acts not validated by administration.

Sections 193—198.

Grant of administration where executor has not renounced.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship ;

Exception.

except that when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

195. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

196. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased ;

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

197. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

198. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee

Sections 199—205.

having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

199. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next of kin to accept or refuse letters of administration.

Citation before grant of administration to legatee other than universal or residuary.

200. When the deceased has died intestate, those who are connected with him, either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

Order in which connections entitled to administer.

201. If the deceased has left a widow, administration shall be granted to the widow, unless the court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Administration to widow unless court see cause to exclude her.

Illustrations.

(a) The widow is a lunatic, or has committed adultery, or has been barred by her marriage settlement of all interest in her husband's estate; there is cause for excluding her from the administration.

(b) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

202. If the Judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow.

Association with widow in administration.

203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate;

Administration where no widow or widow excluded.

Provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Proviso

204. Those who stand in equal degree of kindred to the deceased are equally entitled to administration.

Title of kindred to administration

205. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

Right of widower to administration of wife's estate.

Sections 206 --212.

Grant of administration to creditor.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration and willing to act, they may be granted to a creditor.

Administration where property left in British India.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

PART XXX.

OF LIMITED GRANT.

(a) *Grants limited in Duration.*

Probate of copy or draft of lost will.

208. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

209. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

210. When the will is in the possession of a person residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

211. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b) *Grants for the use and Benefit of others having Right.*

Administration, with will annexed to attorney of absent executor.

212. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration, with the will annexed, may be granted to the attorney of the

Sections 213—218.

absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

213. When any person to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the Province, letters of administration, with the will annexed, may be granted to his attorney, limited as above mentioned.

Administration, with will annexed to attorney of absent person, who, if present, would be entitled to administer.

214. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

215. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor or to such other person as the Court shall think fit until the minor shall have completed the age of eighteen years, at which period and not before, probate of the will shall be granted to him.

Administration during minority of sole executor or residuary legatee.

216. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Administration during minority of several executors or residuary legatees.

217. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule [a] for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

Administration for use and benefit of lunatic *ius habens*.

218. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may

Administration *pendente lite*.

[a] *Sic: real rules*

Sections 219—223.

appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c) For Special Purposes.

Probate limited to purpose specified in will.

219. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an attorney to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited.

Administration with will annexed, limited to particular purpose.

* 220. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to property in which person has beneficial interest.

221. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Administration limited to suit.

222. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution. *

Administration limited to purpose of becoming party to suit to be brought against administrator.

223. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom

Sections 224—229.

it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

224. In any case in which it may appear necessary for preserving the property of a deceased person, the Court, within whose district any of the property is situate, may grant to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Administration limited to collection and preservation of deceased's property.

225. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the Province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who under ordinary circumstances would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator.

Appointment as administrator, of person other than one who under ordinary circumstances, would be entitled to administration.

and in every such case letters of administration may be limited or not as the Judge shall think fit.

(d) Grants with Exception.

226. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Probate or administration with will annexed, subject to exception.

227. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

(e) Grants of the Rest.

228. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of rest.

Sections 229—234.

(f) *Grants of Effects unadministered.*

229. If the executor to whom probate has been granted have died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

230. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

231. When a limited grant has expired by effluxion of time or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

(g) *Alteration in Grants.*

232. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

233. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

(h) *Revocation of Grants.*

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.—Just cause is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the cause;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances.

*Sections 235—237.**Illustrations.*

- (a) The Court by which the grant was made had no jurisdiction.
- (b) The grant was made without citing parties who ought to have been cited.
- (c) The will of which probate was obtained was forged or revoked.
- (d) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.
- (e) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
- (f) Since probate was granted, a later will has been discovered.
- (g) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.
- (h) The person to whom probate was, or letters of administration were granted has subsequently become of unsound mind.

PART XXXI.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES
AND LETTERS OF ADMINISTRATION.

235. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Jurisdiction of District Judge in granting and revoking probates, etc.

236. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge's powers as to grant of probate and administration.

237. The District Judge may order any person to produce and bring into Court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

District Judge may order person to produce testamentary papers.

and if it be not shown that any such power or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same.

and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such

Sections 238—242.

questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default.

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings
of District
Judge's
Court in re-
lation to pro-
bate and ad-
ministration.

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

When and
how District
Judge to in-
terfere for
protection of
property.

239. Until probate be granted of the will of a deceased person, or an administrator of his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate is authorized and required to interfere for the protection of such property, at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

When pro-
bate or ad-
ministration
may be
granted by
District
Judge.

240. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the judge.

Disposal of
application
made to
Judge of
District in
which de-
ceased had
no fixed
abode.

241. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

Conclusive-
ness of pro-
bate or letters
of adminis-
tration.

242. Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable of the deceased, throughout the Province in which the same is [a] granted,

Sections 243—245.

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

243. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorising the grant of probate or administration ;

Conclusive-
ness of appli-
cation for
probate or
administra-
tion, if pro-
perly made
and verified.

and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the court.

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed, and stating

Petition for
probate.

the time of the testator's death,

that the writing annexed is his last will and
testament,

that it was duly executed, and

that the petitioner is the executor therein named ;

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge.

245. In cases wherein the will is written in any language guage other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

In what cases
translation of
will to be an-
nexed to
petition.

“ I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.”

Verification
of translation
by person
other than
Court
translator.

Sections 246—250.

Petition for
letters of
administra-
tion.

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,
the family or other relatives of the deceased, and
their respective residences,

the right in which the petitioner claims,
that the deceased left some property within the
jurisdiction of the District Judge to whom the application
is made, and

the amount of assets which are likely to come to the
petitioner's hands.

Petition for
probate or
administra-
tion to be
signed and
verified.

247. The petition for probate or letters of adminis-
tration shall in all cases be subscribed by the petitioner and
his pleader, if any, and shall be verified by the petitioner in
the following manner or to the like effect:—

“I (A. B.), the petitioner in the above petition, declare
that what is stated therein is true to the best of my informa-
tion and belief.”

Verification
of petition for
probate, by
one witness
to will.

248. Where the application is for probate, the petition
shall also be verified by at least one of the witnesses to the
will (when procurable), in the manner or to the effect fol-
lowing:—

“I (C. D.), one of the witnesses to the last will and test-
ament of the testator mentioned in the above petition, de-
clare that I was present and saw the said testator affix his
signature (or mark) thereto (*as the case may be*), (or that the
said testator acknowledged the writing annexed to the above
petition to be his last will and testament in my presence.)”

Punishment
for false aver-
ment in peti-
tion or decla-
ration.

249. If any petition or declaration which is here-by
required to be verified shall contain any averment which
the person making the verification knows or believes to be
false, such person shall be subject to punishment according
to the provisions of the law for the time being in force for
the punishment of giving or fabricating false evidence.

District
Judge may
examine
petitioner in
person.

250. In all cases it shall be lawful for the District
Judge, if he shall think proper,

to examine the petitioner in person, upon oath or solemn
affirmation, and also

require fur-
ther evi-
dence,

to require further evidence of the due execution of the
will, or the right of the petitioner to the letters of adminis-
tration, as the case may be, and

Sections 251—255.

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

and issue citations to inspect proceedings.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district, and other wise published or made known in such manner as the judge issuing the same may direct.

Publication of citation.

251. Caveats against the grant of probate or administration may be lodged with the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to any other Judge to whom it may appear to the District Judge expedient to transmit the same.

Caveats against grant of probate or administration.

252. The caveat shall be to the following effect:—
“Let nothing be done in the matter of the estate of *A. B.*, late of deceased, who died on the day of at , without notice to *C. D.* of .”

Form of caveat.

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge to whom the application has been made, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

After entry of caveat, no proceeding taken on petition until after notice to caveator.

254. When it shall appear to the Judge that probate of a will should be granted, he will grant the same under the seal of his Court in manner following:—

Grant of probate to be under seal of Court.

“I, , Judge of the District of , hereby made known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a true account thereof.”

Form of such grant.

255. And wherever it shall appear to the District Judge that letters of administration to the estate of a person deceased, with or without a copy of the will annexed,

Grant of letters of administration to be under seal of Court.

Sections 256—259.

should be granted, he will grant the same under the seal of his Court in manner following :—

Form of such grant.

“ I, _____, Judge of the District of _____ hereby made known that on the _____ day of _____ letters of administration (with or without the will annexed, *(as the case may be)* of the property and credits of _____, late of _____, deceased, were granted to _____, the father *(or as the case may be)* of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a true account thereof.”

Administration bond.

256. Every person to whom any grant of administration shall be committed shall give a bond to the Judge of the District Court to ensure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in and administering the estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct.

Assignment of administration bond.

257. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time for grant of probate and administration.

258. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

259. Every District Judge shall file and preserve all original wills, of which probate or letters of administration with the will annexed may be granted by him, among the records of his Court, until some public registry for wills is established ;

and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Sections 260-265.

260. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted, shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Grantee of probate or administration alone to sue, etc., until same revoked.

261. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared, as aforesaid to oppose the grant shall be the defendant.

Procedure in contentious cases,

262. Where any probate is or letters of administration are revoked, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same ;

Payment to executor or Administrator before probate or administration revoked.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Right of such executor or administrator to recoup himself.

263. Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Appeals from orders of District Judge.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

Concurrent Jurisdiction of High Court

PART XXXII.

OF EXECUTORS OF THEIR OWN WRONG.

265. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Executor of his own wrong.

Sections 267-268.

Exceptions.—First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

Illustrations.

(a) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(b) A, having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(c) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

Liability of executor of his own wrong.

When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and rents due at death.

Demands and rights of action of or against deceased survive to and against executor or administrator.

267. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

268. All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Sections 269—273.

Illustrations.

(a) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(b) A sues for divorce. A dies. The cause of action does not survive to his representative.

269. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Power of executor or administrator to dispose of property.

Illustrations.

(a) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(b) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

270. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property.

271. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

Powers of several executors or administrators exercisable by one.

Illustrations.

(a) one of the several executors has power to release a debt due to the deceased.

(b) One has power to surrender a lease.

(c) One has power to sell the property of the deceased, moveable or immoveable.

(d) One has power to assent a legacy.

(e) One has power to endorse a promissory note payable to the deceased.

(f) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

272. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators. Powers of administrator of effects unadministered.

273. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Sections 274—281.

Powers of administrator during minority.

274. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

PART XXXIV.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

As to deceased's funeral.

276. It is the duty of the executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

277. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same may have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that may have come to his hands, and the manner in which they have been applied or disposed of.

As to property of, and debts owing to deceased

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

279. Funeral expenses to a reasonable amount according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid next after such expenses.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then other debts,

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased,

Sections 282—285.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account.

Save as aforesaid, all debts to be paid equally and rateably.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

283. If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled.

Application of moveable property to payment of debts, where domicile not in British India,

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 10,000 rupees, immoveable property to the value of 5,000 rupees, debts on instruments under seal to the amount of 10,000 rupees and debts on instruments not under seal to the same amount. The debts on the instruments under seal are to be paid in full out of the moveable estate, and the proceeds of the immoveable estate are to be applied as far as they will extend towards the discharge of the debts not under seal. Accordingly, one-half of the amount of the debts not under seal, is to be paid out of the proceeds of the immoveable estate.

284. No creditor who has received payment of a part of his debt by virtue of the last preceding section shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

285. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

Sections 286—291.

Executor or administrator not bound to pay legacies without indemnity.

286. If the estate of the deceased is subject to any contingent liabilities an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

287. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions,

Executor not to pay one legatee in preference to another.

and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Non-abatement of specific legacy when assets sufficient to pay debts.

288. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.

289. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Rateable abatement of specific legacies.

290. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

Legacies treated as general for purpose of abatement.

291. For the purpose of abatement, a legacy for life a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Sections 292—294.

PART XXXV.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

292. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent
necessary to
complete
legatee's
title.

Illustrations.

(a) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

293. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of
executor's
assent to
specific
legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of
assent.

Illustrations.

(a) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

294. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional
assent.

Illustrations.

(a) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000

Sections 295-298.

rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of
executor to
his own
legacy.

295. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Implied
assent.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of
executor's
assent.

296. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor
when to
deliver
legacies.

297. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration,

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

PART XXXVI.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

Commence-
ment of
annuity when
no time fixed
by will.

298. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Sections 299—304.

299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

300. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Dates of successive payments when first payment directed to be made within given time, or on day certain.

and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

PART XXXVII.**OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.**

301. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy not specific given for life.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

303. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or,

Procedure when no fund charged with, or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

304. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may

Transfer to residuary legatee of contingent bequest.

Sections 305-308.

transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Investment
of residue
bequeathed
for life, with-
out direction
to invest in
particular
securities.

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities, shall be converted into money and invested in such securities.

Investment
of residue
bequeathed
for life, with
direction to
invest in
specified
securities.

306. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and
manner
of conversion
and invest-
ment.

307. Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit ;

Interest
payable until
investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent per annum upon the market value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Procedure
where minor
entitled to
immediate
payment
or possession
of bequest,
and no direc-
tion to pay to
person on his
behalf.

308. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom the probate was or letters of administration with the will annexed were granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards ;

and if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account ;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid ;

Sections 309-310.

and such money when paid in shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

PART XXXVIII.

OF THE PRODUCE AND INTEREST OF LEGACIES.

309. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c) The testator bequeaths all his four per cent Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

310. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Sections 311-317.

Interest when
no time fixed
for payment
of general
legacy.

311. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when
time fixed.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

Rate of inter-
est.

313. The rate of interest shall be four per cent per annum.

No interest
on arrears of
annuity with-
in first year
after testa-
tor's death.

314. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on
sum to be-
invested to
produce
annuity.

315. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

PART XXXIX.

OF THE REFUNDING OF LEGACIES.

Refund of
legacy paid
under Judge's
orders.

316. When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund if
paid volun-
tarily.

317. When an executor has voluntarily paid a legacy he cannot call upon a legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

Sections 318-322.

318. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets ; in such case, if further time has been allowed under the one hundred and twenty-fourth section, for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Refund when legacy has become due on performance of condition within further time allowed under section 124.

319. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee is compellable to refund in proportion.

320. Where an executor or administrator has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution ;

Distribution of assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

321. A creditor who has not received payment of his debt may [a] call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies ; and whether the payment of the legacy by the executor was voluntary or not.

Creditor may call upon legatee to refund.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.

[a] Certain words of S. 321, which were repealed by Act XV of 1877, have been omitted.

Sections 323—328.

When unsatisfied legatee must first proceed against executor, if solvent.

323. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent ; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to refunding of one legatee to another.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees and D to refund 120 rupees.

Refunding to be without interest.

325. The refunding shall in all cases be without interest.

Residue after usual payments to be paid to residuary legatee.

326. The surplus or residue of the deceased's property after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

PART XL.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

Liability of executor or administrator for devastation.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(b) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(c) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

For neglect to get in any part of property.

328. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Sections 129—332.

Illustrations.

(a) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(b) The executor neglects to sue for a debt till the debtor is liable to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.

MISCELLANEOUS.

329. [*Stamps and Fees.*] Repealed by Act VII of 1870.

330. [*Saving as to Administrator General.*] Repealed by Act XXIV of 1867.*

331. The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindu, Muhammadan or Buddhist: nor shall they apply to any will made, or any intestacy occurring before the first day of January 1866.

Succession to property of Hindus, etc., and certain wills, intestacies and marriages, not affected.

The fourth section shall not apply to any marriage contracted before the same day.

332. The Governor-General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect or tribe in British India, or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of the Act, or of the part of the Act mentioned in the order.

Power of Governor-General in Council to exempt any race, sect or tribe in British India from operation of Act.

The Governor-General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations made under this section shall be published in the *Gazette of India*.

SCHEDULE.

[*Stamps and Fees.*] Repealed by Act VII of 1870.

* Act XXIV of 1867 was passed in British India before the date of the extension of the present Act to Mysore.

Section 1—8.

ACT No. V OF 1866.

Notification by the Government of India, Foreign Department, Judicial, No. 106, dated Fort William, the 15th April 1868.

His Excellency the Governor-General in Council is pleased to declare that the provisions of Act V of 1866 (being an Act to provide a summary procedure on Bills of Exchange and to amend in certain respects the Commercial Law of British India), are applicable to the Mysore Territory.

2nd. Under Section 8 of the aforesaid Act the provisions of Sections 2 to 7, both inclusive, of that Act shall be held to apply to the Court of the Deputy Superintendent of the Bangalore District.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 23RD FEBRUARY 1866.)

An Act [a] to amend in certain respects the Commercial Law of British India.

Preamble.

[b] Whereas inconvenience is felt by persons engaged in trade by reason of the laws of British India being in some particulars different from those of England in matters of common occurrence in the course of such trade; and whereas, with a view to remedy such inconvenience, it is expedient to amend the laws of British India as hereinafter is mentioned; It is enacted as follows:—

Interpretation clause.

“British India.”

1. In this Act, unless there be something repugnant in the subject or context,—

“British India” shall mean the territories which are or may become vested in Her Majesty or Her successors by the Statute 21 and 22 Vic., cap. 106 (*An Act for the better Government of India*).

[*Interpretation-clauses of “High Court” and “Local Government.”*] *Repealed by Act X of 1877.*

2. [*Form of plaint and summons in summary suits upon bills of exchange.*] *Repealed by Act X of 1877.*

3 to 7. [*Procedure in such suits.*] *Repealed by Act X of 1877.*

8. [*Local Government may extend Act.*] *Repealed by Act X of 1877.*

(a)—(b) Certain words which were repealed by Act X of 1877 have been omitted.

Sections 9—15.

9. 10. [*Guarantees.*] *Repealed by Act IX of 1872.*

11. No acceptance of any Bill of Exchange, whether Inland or Foreign, made after the first day of May 1866, shall be sufficient to bind or charge any person, unless the same be in writing on such Bill, or, if there be more than one part of such Bill, on one of the said parts, and signed by the acceptor or some person duly authorized by him.

Acceptance
of bill to be
in writing
and signed

12. Every Bill of Exchange or Promissory Note drawn or made in any part of British India, and made payable in or drawn upon any person resident in any part of British India, shall be deemed to be an Inland Bill, but nothing herein contained shall alter or affect the stamp duty, if any, which, but for this enactment, would be payable in respect of any such Bill or Note.

What deemed
"inland
bills."

13. Protest of a Bill of Exchange, whether Inland or Foreign, when purporting to be made by a Notary Public, shall be *prima facie* evidence that the Bill has been dishonoured

Protest by
Notary
Public to b.
prima facie
evidence of
dishonour

14. [*Suits on lost negotiable instruments.*] *Repealed by Act X of 1877.*

15. Every assignee, by endorsement or otherwise, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred to and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

Rights under
marine and
fire-policies
to vest in
assignees

SCHEDULE.

[*Repealed by Act X of 1877 as amended by Act XII of 1879.*]

Sections 1—3.

ACT No. XXI OF 1866.

Notification by the Government of India, Foreign Department, Judicial No. 58 I. J., dated Fort William, the 14th February 1881.

The Viceroy and Governor-General in Council is pleased to extend Act XXI of 1866 (The Native Converts' Marriage Dissolution Act) to the Province of Mysore.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL
ON THE 2ND APRIL 1866.)

An Act to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity.

Preamble.

WHEREAS it is expedient to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated, on religious grounds, by their wives or husbands ; It is enacted as follows :—

Short title

1. This Act may be cited as " The Native Converts' Marriage Dissolution Act, 1866."

2. [*Commencement of Act.*] *Repealed by Act XVI of 1874.*

Interpretation clause.
"Native husband".

3. In this Act :—

" Native husband " shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew :

" Native wife."

" Native wife " shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan nor a Jewess :

" Native law."

" Native law " shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans and Jews:

" Month and year."

" Month " and " year " shall respectively mean month and year according to the British calendar :

" High Court."

" High Court " shall mean the highest Civil Court of appeal in any place to which this Act extends :

Number.

And unless there be something repugnant in the subject or context, words importing the singular number shall include the plural, and words importing the plural number shall include the singular.

Sections 4—11.

4. If a Native husband change his religion for Christianity, and if in consequence of such change his Native wife, for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society.

When convert deserted by his wife may sue for conjugal society.

5. If a Native wife change her religion for Christianity, and if in consequence of such change her Native husband, for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society.

When convert deserted by her husband may sue.

6. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature, the suit shall be commenced in such Court : otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit.

Court in which suit shall be brought.

7. The suit shall be commenced by a petition in the form in the first schedule to this Act, or as near thereto as the circumstances of the case will allow.

Suit to be commenced by verified petition.

The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints ; and the petition [a] may be amended by permission of the Court.

8. A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge.

On service of petition, citation to respondent.

9. In ordinary cases the citation shall be in the form in the second schedule to this Act, or as near thereto as the circumstances of the case will allow.

Form of citation.

But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the third schedule to this Act, or as near thereto as the circumstances of the case will allow.

10. A copy of the citation sealed with the seal of the Court shall be served on the respondent ; and the provisions of the Code of Civil Procedure as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to citations under this Act.

Service of citation.

11. If the respondent shall not obey such citation, and comply with every other requirement made upon her

Penalty on respondent not obeying citation.

[a] Certain words regarding court-fee, which were repealed by Act VII of 1870, have been omitted.

Sections 12—15.

or him under the provisions of this Act, she or he shall be liable to punishment under section 174 of the Indian Penal Code.

Points to be proved on appearance of petitioner

12. On the day fixed in the citation the petitioner shall appear in Court, and the following points shall be proved--

(1) The identity of the parties :

(2) The marriage between the petitioner and the respondent :

(3) That the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years :

(4) The desertion or repudiation of the petitioner by the respondent :

(5) That such desertion or repudiation was in consequence of the petitioner's change of religion :

(6) And that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

First interrogation of respondent.

13. The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal.

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge ; but when the respondent is exempt by law from personal appearance in Court, or when the Judge shall, in his discretion, excuse the respondent from such appearance, the interrogations shall be made by commissioners acting under such commission as thereafter mentioned.

Interrogations by Judge may be public or private.

14. Every interrogation mentioned in this Act and made by the Judge may, at the discretion of the Judge, take place in open Court or in his private room.

If any such interrogation take place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

Procedure when female respondent refuses to cohabit with petitioner.

15. If the respondent be a female, and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the

Sections 16—18.

petitioner's change of religion, shall make an order adjourning the case for a year, and directing that, in the interim, the parties shall, at such place and time as he shall deem convenient have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

Adjournment for a year.

Interview.

16. At the expiration of such adjournment the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to ; and if the points mentioned in the twelfth and this section of this Act shall be proved to the satisfaction of the Judge, and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner ; and the Judge shall, by a decree under his hand and sealed with the seal of his Court, declare that the marriage between the parties is dissolved.

Procedure on expiration of adjournment.

Interrogation of respondent.

Decree.

17. If the respondent be a male, and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner change of religion, shall adjourn the case for a year.

Decree in case of male respondent refusing to cohabit on the ground of petitioner's change of religion.

At the expiration of such adjournment, the petitioner shall again appear in Court ; and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the Judge shall thereupon pass such a decree as last aforesaid :

Provided that, if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall, *mutatis mutandis*, be the same as in the case of a female respondent.

Proviso.

18. Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated, and if, in answer to the interrogatories made pursuant to the thirteenth section of this Act, the respondent shall refuse to cohabit with the petitioner, and allege, as the ground for

Decree if respondent so refuse in case of unconsummated marriage, either party being impubes at time of marriage.

Sections 19—23.

such refusal, that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid.

Liberty to parties to marry again.

19. When any decree dissolving a marriage shall be passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such remarriage shall be legitimate, any Native law to the contrary notwithstanding :

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

Judge to order commission to issue for examination of exempted persons.

20. In suits instituted under this Act, the Judge shall order a commission to issue to such persons, whether males or females or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid.

The provisions of the Code of Civil Procedure shall, so far as practicable, apply to commissions issued under this section.

Proof of marriage and desertion or repudiation of petitioner in consequence of conversion.

21. At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after his or her change of religion and after knowledge thereof by the respondent, shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner, and shall also be sufficient evidence that such desertion or repudiation was in consequence of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

Civil Procedure Code applied.

22. The provisions of the Code of Civil Procedure as to the summoning and examination of witnesses shall apply in suits instituted under this Act.

Dismissal of suit if either party under age required by Act, or if parties cohabiting, or respondent willing to cohabit.

23. If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are cohabiting as man and wife, or if the Court is satisfied by the evidence

Sections 24—28.

adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

24. If, at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and upon proof of the former decree and of such renewed repudiation or desertion, the suit shall re-commence at the stage at which it had arrived immediately before the passing of such decree; and, after the proofs, interrogations, interview and adjournment which may then be requisite under the provisions hereinbefore contained, the Judge shall pass a decree of the nature mentioned in the sixteenth section of this Act.

Revival of suit after such dismissal.

25. If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

Petitioner's cruelty or adultery to bar suit.

A suit dismissed under this section shall not be revived.

26. If the petitioner, being a male, has at the time of the institution of the suit two or more wives, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

Male petitioner's cohabitation with one of several wives to bar suit.

The provisions as to revival contained in the twenty-fourth section of this Act shall apply, *mutatis mutandis*, to a suit dismissed under this section.

27. A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children, or of any right or interest which they would have had, according to the Native law applicable to them by way of maintenance, inheritance or otherwise, in case the marriage had not been so dissolved as aforesaid.

Dissolution of marriage not to affect status or rights of children.

28. If a suit be commenced under the provisions of this Act, and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself

Power to Court to award alimony.

Sections 29—32.

suitably to her station in life and to prosecute or defend the suit, the Court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit, and also for her maintenance pending the suit.

If the suit be brought by a husband against a wife, the Court may by the decree order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just, and having regard to the condition and station in life of the parties.

Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

No appeal under Act; but Judge may state case raising question whether conversion has dissolved marriage.

29. No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge if he shall entertain any doubt as to the validity of such defence, shall, either of his own motion or on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the High Court.

Case to state necessary facts and documents, and suit to be stayed.

30. Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

Case to be decided by three Judges

31. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the presidency-towns; and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakil.

High Court may refer case to Judge for addition or alterations

32. If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

Sections 33—35.

33. It shall be lawful for the High Court, upon the hearing of any such case, to decide the questions raised there-by, and to deliver its judgment thereon containing the ground on which such decision is founded ;

High Court
may decide
question
raised, and
Judge shall
dispose of
case
accordingly.

and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment.

34. Nothing contained in this Act [a] * * * Saving of Roman Catholic marriages.
shall be taken to render invalid any marriage of a Native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies and customs of the Roman Catholic Church. * * * [b]

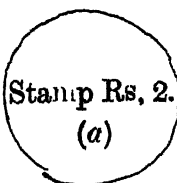
35. This Act shall extend to all the territories that are or shall become vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore and Malacca. * * * [c]

Extent of
Act.

THE FIRST SCHEDULE.

(See Section 7.)

Form of Petition.



To the Judge of the Civil Court of

The day of

18

The petition of A. B. of

Sheweth :—

1. That your petitioner was born on or about the * day of 18
 2. That your petitioner was on the day of in
- the year 18 lawfully married to C. D. at

[a], [b] and [c] Certain words repealed by Act XVI of 1874 before the present Act was extended to Mysore have been omitted.

[a] But see Act VII of 1870, Schedule II, No. 14, according to which the fee payable is five rupees.

3. That the said *C. D.* is now of the age of years or thereabouts.
 4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of 18 ,
 5. That previous to the day of 18 your petitioner changed his religion for Christianity, and that on such day he was baptized and became a member of the Church of
 6. That on the day of 18 [*at least six months. prior to the date of the petition*], the said *C. D.* deserted your petitioner, and has not since resumed cohabitation with him.
 7. That such desertion was in consequence of your petitioner's said change of religion.
 8. That there is no collusion nor connivance between your petitioner and the said *C. D.*
- Your petitioner therefore prays that your Honour will order the said *C. D.* to live and cohabit with your petitioner, or declare that your petitioner's marriage is dissolved.

A. B.

Form of verification.

I, *A. B.*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

THE SECOND SCHEDULE.

(*See Section 9.*)

Form of Citation in ordinary cases.

Form of Citation in ordinary cases.

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you, the said *C. D.*, has filed his [*or her*] petition against you in the Civil Court of alleging that you, the said *C. D.*, have deserted him [*or her*] for six months in consequence of his [*or her*] having changed his [*or her*] religion for Christianity, and praying that, unless you consent to live and cohabit with him [*or her*], it may be declared that his [*or her*] marriage is dissolved : Now this is to command you that, at the expiration of

 days [*at least one month*] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so appearing, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Signed) *E. F.*,
Judge of the Civil Court of

Indorsement to be made after service.

This citation was duly served by *G. H.* on the within named *C. D.* of at on the day of

THE THIRD SCHEDULE.

(See Section 9.)

*Form of Citation in Case of Respondent exempt from
Appearance in Court.*

To C. D. of

Whereas A. B. of , claiming to have been lawfully married to you, the said C. D., has filed his [or her] petition against you in the Civil Court of , alleging that you, the said C. D., have deserted him [or her] for six months in consequence of his [or her] having changed his [or her] religion for Christianity, and praying that, unless you consent to cohabit with him [or her], it may be declared that his [or her] marriage is dissolved. Now this is to command you that, at the expiration of days [at least one month] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by commissioners duly authorised in that behalf under a commission issued by this Court, in reference to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that, in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Signed) E. F.,

*Judge of the Civil Court of**Indorsement to be made after service.*

The citation was duly served by G. H. on the within-named O. D. o
at on the day of 18 .

(Signed) G. H.

ACT No. XXV OF 1867.

*Notification by the Government of India, Foreign Department,
Judicial, No. 176, dated Simla, the 12th September 1867.*

His Excellency the Governor-General of India in Council is pleased to declare Acts XX of 1847* and XXV of 1867 (for the Regulation of Printing Presses, &c..) in force in the Province of Mysore.

* For Act XX of 1847, *Vide supra*.

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ACT No. XXV OF 1867.

(RECEIVED THE GOVERNOR-GENERAL'S ASSENT ON THE
22ND MARCH 1867.)

*An Act for the regulation of Printing Presses and Newspapers,
for the preservation of copies of books printed in [a]
the Territories of Mysore, [a] and for the
registration of such books.*

Whereas it is expedient to provide for the regulation Preamble.
of printing presses and of periodicals containing news, for
the preservation of [b] copies of every book printed or litho-
graphed in [a] the Territories of Mysore, [a] and for the regis-
tration of such books ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

[c] 1. In this Act, unless there shall be something re- Interpretation
pugnant in the subject or context,— clause.

“ book ” includes every volume, part or division of a “ Book.”
volume, and pamphlet, in any language and every sheet of
music, map, chart or plan separately printed or lithographed.

“ Magistrate ” means any person exercising the full “ Magistrate.”
powers of a Magistrate [d].

words in the singular include the plural, and *vice versa*. Number.

words denoting the masculine gender include females. Gender.

2. [*Repeal of Act XI of 1835.*] *Repealed by Regulation
I of 1894, s. 4.*

[a-a] These words in the Preamble were substituted for the original words by
Regulation I of 1894, s. 2.

[b] The word “ three ” in the preamble, which was repealed by Regulation
94, s. 1, has been omitted.

[c] The interpretation clauses relating to “ British India ” and “ Local Gov-
ernment ” in s. 1 were repealed by Regulation I of 1894, s. 3.

[d] Certain words in the definition of “ Magistrate ” in s. 1, which were re-
pealed by Regulation I of 1894, s. 3, have been omitted.

Sections 3—5.

PART II.

OF PRINTING PRESSES AND NEWSPAPERS.

Particulars
to be printed
on books and
papers.

3. Every book or paper printed within [a] the Territories of Mysore [a] shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) of the publisher and the place of publication.

Keeper of
Printing
Press to
make
declaration.

4. No person shall, within [a] the Territories of Mysore, [a] keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the follow-

ing declaration before the Magistrate within whose local jurisdiction such press may be :—

“ I, *A. B.*, declare that I have a press for printing at—.”

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

Rules as to
publication
of printed
periodicals
containing
public news.

5. No printed periodical work, containing public news or comments on public news, shall be published in [a] the Territories of Mysore, [a] except in conformity with the rules hereinafter laid down :

(1) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published, and shall make and subscribe, in duplicate, the following declaration :—

“ I, *A. B.*, declare that I am the printer [*or publisher, or printer and publisher*] of the periodical work entitled— and printed [*or published, or printed and published, as the case may be*] at——.”

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted :

(2) As often as the place of printing or publication is changed, a new declaration shall be necessary :

(3) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave [a] the Territories of Mysore, [a] a new declaration from a printer or publisher resident within the said territories shall be necessary.

[a-a.] These words in Sections 3, 4 and 5 were substituted for the original words by Regulation I of 1894, s. 2.

Sections 6—8.

6. Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Authentica-
tion of
declaration.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the [a] Chief Court [a] or [b] other principal Civil Court of original jurisdiction for the place where [b] the said declaration shall have been made.

Deposit.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.*

Inspection
and supply
of copies.

7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration.

Office copy
of declaration
to be *prima
facie* evidence

8. Provided always that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration :—

New decla-
ration by
persons who
have signed
de claration
and subse-
quently
ceased to be
printers or
publishers.

“ I, A. B. declare that I have ceased to be the printer [or publisher, or printer and publisher] of the periodical work entitled——.”

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made. and one original of the said latter declaration shall be filed along with each original of the former declaration.

Authentica-
tion and
filing.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original

Inspection
and supply
of copies.

[a-a, b-b,] These words in s. 6 were respectively substituted for the original words by Regulation I of 1894, s. 5.

Section 9.

on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees.

Putting copy
in evidence.

In all trials in which a copy, attested as is aforesaid, of the former declaration, shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declaration was, at any period subsequent to the date of the latter declaration printer or publisher of the periodical work therein mentioned.

PART III [a].

DELIVERY OF BOOKS.

Copies of
books printed
after com-
mencement
of Act to be
delivered
gratis to Gov-
ernment.

9. Printed or lithographed copies of the whole of every book which shall be printed or lithographed in the Territories of Mysore after this Act shall come into force, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Government of Mysore shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government of Mysore, as follows, that is to say :—

- (a) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and,
- (b) if within one calendar year from such day the Government of Mysore shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Government of Mysore on the printer, another such copy, or two other such copies, as the Government of Mysore may direct.

The copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

[a] This part was substituted for the original Part III by Regulation I of 1894, s. 6.

Sections 10—14.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to—

- (i) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or
- (ii) any periodical work published in conformity with the rules laid down in section 5 of this Act.

10. The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

Receipt for copies delivered under section 9.

11. The copy delivered pursuant to clause (a) and the copies, if any, delivered pursuant to clause (b) of the first paragraph of section 9 of this Act shall be disposed of as the Government of Mysore shall from time to time determine.

Disposal of copies delivered under section 9.

PART IV.

PENALTIES.

12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 or this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for printing contrary to rule in section 3.

13. Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for keeping press without making declaration required by section 4.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall, on conviction before a

Punishment for making false statement.

Sections 15—17.

Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

Penalty for
printing or
publishing
periodicals
without con-
forming to
rules.

15. Whoever shall print or publish any such periodical work as is hereinbefore described, without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

Penalty for
not deliver-
ing books or
not supplying
printer with
maps.

[a] 16. If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government of Mysore such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorised by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government of Mysore such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

Recovery of
forfeitures
and disposal
thereof and
of fines.

[a] 17. Any sum forfeited to the Government of Mysore under the last foregoing section may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the Code of

[a a] These sections were substituted for the original sections 16 and 17 by Regulation I of 1894, s. 7.

Section 18.

Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code, for the levy of a fine.

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Government of Mysore shall, from time to time, direct.

PRAT V.

REGISTRAION OF BOOKS.

18. There shall be kept at such office and by such officer as [a] the Government of Mysore [a] shall appoint in this behalf, a book to be called a Catalogue of Books printed in [a] the Territories of Mysore, [a] wherein shall be registered a memorandum of every book which shall have been delivered [b] pursuant to clause (a) of the first paragraph of section 9 [b] of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say) :—

Registration
of memoran-
da of books.

- (1) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language :
- (2) the language in which the book is written :
- (3) the name of the author, translator or editor of the book or any part thereof :
- (4) the subject :
- (5) the place of printing and the place of publication :
- (6) the name or firm of the printer and the name or firm of the publisher .
- (7) the date of issue from the press or of the publication :
- (8) the number of sheets, leaves or pages :
- (9) the size :
- (10) the first second or other number of the edition :
- (11) the number of copies of which the edition consists :
- (12) whether the book is printed or lithographed :
- (13) the price at which the book is sold to the public : and
- (14) the name and residence of the proprietor of the copyright or of any portion of such copyright.

[a-a, b-b] These words etc., in s. 18 were respectively substituted for the original words by Regulation I of 1894, sections 2 and 8.

Sections 19—23.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the [a] copy thereof pursuant to clause (a) of the first paragraph of section 9 [a].

Effect of
Registration.

Act XX of
1847 applied.

Publication
of memoranda
registered

Every registration under this section shall, upon payment of the sum of two rupees to the officer keeping the said Catalogue, be deemed to be an entry in the Book of Registry kept under Act No. XX of 1847 (*for the encouragement of learning in the Territories subject to the Government of the East India Company, by defining and providing for the enforcement of the right called Copyright therein*); and the provisions contained in that Act as to the said Book of Registry shall apply, *mutatis mutandis*, to the said Catalogue.

• 19. The memoranda registered during each quarter in the said Catalogue shall be published in the [b] official Gazette [b] as soon as may be after the end of such quarter. [c].

PART VI.

MISCELLANEOUS.

Power to
make rules.

20. [d] The Government of Mysore [d] shall have power to make such rules as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules.

Publication.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the [b] official Gazette [b].

Power to
exclude any
class of books
from opera-
tion of Act.

21. [d] The Government of Mysore [d] may, by notification in the [b] official Gazette, [b] exclude any class of books from the operation of the whole or any part or parts of this Act.

22. [*Continuance of parts of Act.*] *Repealed by Regulation I of 1894, s. 4.*

Commence-
ment of Act.

23. This Act shall come into operation on the first day of July 1867.

[a-a] These words, etc., in s. 18 were respectively substituted for the original words by Regulation I of 1894, s. 8.

[b-b, d-d] These words in sections 19, 20 and 21 were respectively substituted for the original words by Regulation I of 1894, s. 2.

[c] Certain words in s. 19, repealed by Regulation I of 1894, s. 4, have been omitted.

ACT No. XXVI OF 1870.

*Notification by the Government of India, Foreign Department,
Judicial, No. 246 I. J., dated Simla, the 4th September
1879.*

The Governor-General in Council is pleased to extend Act No. XXVI of 1870 (The Prisons Act, 1870) to the Territories of Mysore, with effect from the 1st October 1879, and subject to the following modifications, namely :—

(a) Sections 1 and 2 and in section 13 the words “Magistrate of the District or ”* shall be omitted.

(b) In the preamble for the words “ North Western Provinces, the Punjab, Oudh, the Central Provinces, and British Burma ” the words “ Territories of Mysore ” shall be substituted.

(c) In section 6, for the first paragraph, the words “ An Inspector-General of Prisons shall be appointed by the Governor-General in Council ” shall be substituted.

(d) In sections 4 and 6, for the words “ under such Government ” the words “ of Mysore ”; in the second paragraph of section 6, for the word “ each ” the word “ the ”; and for the words “ Local Government ” wherever they occur, the words “ Chief Commissioner of Mysore ” shall be substituted†

* *Sic* : should be “ the Magistrate of the District or.”

† This last direction is virtually superseded by the Notification of the Government of Mysore No. 153, dated the 2nd September 1881, according to which the expression “ Local Government ” is to denote “ the Government of His Highness the Maharaja of Mysore.”

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ACT No. XXVI OF 1870.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON
THE 3RD OCTOBER 1870).

An Act to amend the law relating to Prisons.

WHEREAS it is expedient to amend the law relating to
prisons in the [a] Territories of Mysore, [a] and to provide
rules for the regulation of such prisons ; It is hereby enacted
as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

1. (*Short title, local extent, and commencement.*) Omitted
as directed by Notification No. 246 I. J. dated the 4th September
1879.

2. (*Repeal of enactments.*) Omitted as directed by Notifi-
cation No. 246 I J., dated the 4th September 1879.

3. In this Act :—

“prison” means any gaol or penitentiary, and includes
the airing-grounds or other grounds or buildings occupied for
the use of the prison ;

Interpreta-
tion clause.
“prison.”

“criminal prisoner” means any prisoner charged with
or convicted of a crime ;

“criminal
prisoner,”

and “civil prisoner” means any prisoner confined in a
civil jail, or on the civil side of a jail.

“civil
prisoner.”

CHAPTER II.

MAINTENANCE AND OFFICERS OF PRISONS.

4. The Local Government shall provide for the prisoners
in the territories [b] of Mysore, [b] accommodation in a prison
or prisons constructed and regulated in such manner as to
comply with the requisitions of this Act in respect of the
separation of prisoners.

Local
Government
to provide
prison ac-
commodation

5. Whenever it appears to the Local Government that
the number of persons in any prison is greater than can
conveniently or safely be kept therein,

Temporary
shelter of
prisoners.

[a-a, b-b] These words were respectively substituted for the original words by
Notification No. 246 I. J., dated the 4th September 1879.

Sections 6-9.

or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made by such officer and in such manner as the Local Government from time to time directs, for the temporary shelter and safe custody of so many of the prisoners as cannot be conveniently or safely kept in the prison.

Prisoners for whom such temporary shelter is provided shall be subject to the same rules as if they were within the prison.

Inspector-General of prisons.

6. [a] An Inspector-General of Prisons shall be appointed by the Governor-General in Council [a].

In [b] the [b] Inspector-General so appointed shall be vested (subject to the orders of the Local Government) the general control and superintendence of all prisons situate in the territories [c] of Mysore [c].

Officers of prison.

7. For every prison there shall be a superintendent, a medical officer (who may also be the superintendent), a gaoler and such subordinate officers as the Local Government thinks necessary.

Subject to the orders of the Governor General in Council, the Local Government may direct that for any specified prison there shall also be a deputy medical officer and a deputy gaoler.

Appointment of Officers.

8. The Local Government shall appoint the superintendent and the medical officer and the deputy medical officer.

The superintendent (subject to the approval of the Inspector-General of Prisons) shall appoint the gaoler and deputy gaoler.

The superintendent shall also appoint the subordinate officers.

Salaries, suspension and dismissal of officers.

9. Every officer appointed under this Act shall receive such salary as (subject to the approval of the Governor General of India in Council) the Local Government directs; and may be suspended or dismissed by the authority appointing him :

[a-a] These words were substituted for the first paragraph of section 6 by Notification No. 246 I. J., dated the 4th September 1879.

[b-b, c-c] These words were respectively substituted for the original words by Notification No. 246 I. J., dated the 4th September 1879.

Sections 10-13.

Provided that no gaoler or deputy gaoler shall be dismissed without the consent of the Inspector-General of Prisons.

Any subordinate officer dismissed under this section may appeal to the Inspector-General, whose orders on such appeal shall be final.

CHAPTER III.

DUTIES OF OFFICERS.

Generally.

10. All officers of a prison shall obey the directions of the superintendent; all subordinate officers shall perform such duties as may be directed by the gaoler with the sanction of the superintendent; and the duties of each subordinate officer shall be inserted in a book to be kept by him.

Officers to obey superintendent.

11. No officer of a prison shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner.

Officers not to sell to let prisoners.

12. No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison: nor, except so far as is expressly allowed by rules made under section 54, shall he derive any benefit, directly or indirectly, from the sale of any article on behalf of the prison or belonging to a prisoner.

Officers not to contract with prisoners:

not to benefit by sales.

Superintendent.

13. Subject to the orders of the Inspector-General of Prisons, the superintendent shall:—

Duties of superintendent.

manage the prison in all matters relating to discipline, labour, expenditure, punishment and control:

correspond on all matters connected with the prison with and through the Inspector General:

submit to the Inspector General all bills of prison-expenditure with proper vouchers for audit:

report to the Inspector General from time to time, as they occur, all escapes and recaptures, and all out-breaks of disease:

send to the Inspector General returns of all prisoners sentenced to transportation:

Sections 14—16.

periodically inspect all property of the Government in his charge, and report thereon to the Inspector General ;

and, generally, obey all rules made under section 54 for the guidance of the superintendent.

The superintendent shall also obey all orders respecting the prison given by [a] the Deputy Commissioner, [b] and shall report to the Inspector General all such orders and the action taken thereon.

Medical Officer.

Power to
make rules
as to medical
officer's
duties.

14. The Local Government shall make rules as to each of the following matters :—

how often the medical officer shall visit the prison and see each prisoner :

the records to be made respecting sick prisoners :

periodical inspection of every part of the prison :

reports on its cleanliness, drainage, warmth and ventilation :

reports on the provisions, water, clothing and bedding supplied to the prisoners.

The medical officers shall obey such rules.

Medical
officer to
obey rules.
To report
special cases.

15. Whenever the medical officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the medical officer shall report the case in writing to the superintendent, together with such directions as the medical officer thinks proper.

To make
entries as to
death of
prisoners.

16. On the death of any prisoner, the medical officer shall forthwith record in writing the following particulars, namely,—

when the deceased was taken ill,

when the medical officer was first informed of the illness, the nature of the disease,

when the prisoner died,

and (in cases where a *post mortem* examination is made) an account of the appearances after death,

[a] The words "the Magistrate of the District or" in section 13 have been omitted as directed by Notification No 246 I. J., dated the 4th September 1879 [b] The words "as the case may be" in section 13 have also been omitted as a consequence of the previous omission, though this is not directed by the Notification itself.

Sections 17—23.

together with any special remarks that appear to the medical officer to be required.

17. Where a deputy medical officer is appointed to a prison, he shall be competent to perform any duty required by this Act. or by any rule made hereunder, to be performed by the medical officer.

Deputy
medical
officer.

When there is no deputy medical officer, or when his services are not available by reason of sickness or other cause, the Local Government may, by general or special order, appoint a subordinate medical officer to act as a substitute for the medical officer, and the subordinate medical officer so appointed shall perform all the duties of the medical officer.

Subordinate
medical
officer.

Gaoler.

18. The gaoler shall reside in the prison, unless the superintendent permits him in writing to reside elsewhere. The gaoler shall not, without the Inspector General's sanction, be concerned in any other employment.

Residence of
gaoler.

19. The gaoler shall deliver to the medical officer daily a list of such prisoners as are confined in punishment-cells.

To deliver
list of prison-
ers in puni-
shment-cells.

20. Upon the death of a prisoner, the gaoler shall give immediate notice thereof to the superintendent.

To give
notice of
death of
prisoners.

21. The gaoler shall keep, or cause to be kept, the following records :—

To keep
books and
accounts.

- (1) a register of warrants ;
- (2) a book showing when each prisoner is to be released ;
- (3) a punishment-book for the entry of the punishments inflicted for prison-offences ;
- (4) a visitors' book for the entry of any observations made by visitors to the prison ;
- (5) a record of the money and other articles taken from prisoners ;

and all such other records as may be prescribed by rules made under section 54.

22. The gaoler shall be responsible for the safe custody of the records to be kept by him under section 21, and also for the commitments and all other documents confided to his care.

Responsible
for safe
custody of
documents.

23. The gaoler shall not be absent from the prison for a night without permission in writing from the superintendent ; but if absent without leave for a night from unavoidable

Not to be
absent with-
out leave.

Sections 24—28.

necessity, he shall report the fact and the cause of it to the superintendent.

Deputy
gaoler.

24. Where a deputy gaoler is appointed to a prison, he shall be competent to perform any duty required by this Act or by any rule made under section 54 to be performed by the gaoler.

Where there is no deputy gaoler, or where his services are not available by reason of sickness or other cause, the superintendents shall, when the gaoler is absent from the prison or temporarily incapacitated, appoint an officer of the prison to act as his substitute during such absence or incapacity, and the substitute so appointed shall have all the powers and perform all the duties of the gaoler.

Subordinate Officers.

Powers of
gate-porter.

25. The officer acting as gate-porter, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search any person suspected of bringing in spirits or other prohibited articles into the prison, or of carrying out any property belonging to the prison, and if any such articles or property be found, shall give immediate notice thereof to the gaoler.

Subordinate
officers not
to be absent
without
leave.

26. Subordinate officers shall not be absent from the prison without leave from the superintendent, or from the gaoler, and before absenting themselves they shall leave their keys in the gaoler's office.

CHAPTER IV.

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS.

Prisoners to
be searched
on entrance.

27. When a prisoner is first admitted, and whenever he afterwards enters the prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

Medical
examination
of criminal
prisoners.

Every criminal prisoner shall also, as soon as possible after admission, be examined by the medical officer, who shall enter in a book, to be kept by the gaoler, a record of the state of the prisoner's health, and any observations which the medical officer thinks fit to add.

Effects of
criminal
prisoners
retained.

28. All money or other effects in respect whereof no order of a competent Court has been made, and which may be brought into the prison by any criminal prisoner, or sent

Sections 29—33.

to the prison for his use, shall be placed in the custody of the gaoler.

29. All prisoners, previously to being removed to any other prison, shall be examined by the medical officer.

Medical examination before removal and discharge of prisoners

No prisoner shall be removed to any other prison unless the medical officer certifies that the prisoner is free from any illness rendering him unfit for removal.

No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the medical officer, such discharge is safe.

CHAPTER V.

DISCIPLINE OF PRISONERS.

30. The requisitions of this Act, with respect to the separation of prisoners, are as follows :—

(1) In a prison containing female prisoners as well as males, the women shall be imprisoned in separate buildings or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the men.

Requisition of Act as to separation of prisoners.

(2) In a prison where children under twelve years of age are confined, means shall be provided for separating them altogether from the other prisoners.

(3) Criminal prisoners before trial shall be kept apart from convicted prisoners.

(4) Civil prisoners shall be kept apart from criminal prisoners.

31. The Local Government shall have power to make rules—

Rules as to separate confinement.

(1) as to what cells only shall be used for the separate confinement of prisoners :

(2) as to the time during which prisoners not guilty of offences against prison-rules may be confined separately.

32. No cell shall be used for separate confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison.

Cells to be furnished with means of communication.

33. Every prisoner under warrant or order for execution shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the gaoler, and all articles

Prisoners under sentence of death.

Sections 34—37.

shall be taken from him which the gaoler deems it dangerous or inexpedient to leave in his possession.

Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of an officer or guard.

CHAPTER VI.

FOOD, CLOTHING AND BEDDING OF PRISONERS.

Civil prisoner may maintain himself.

34. A civil prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by the Inspector-General.

Civil prisoner not to sell provisions.

35. No part of any food, clothing, bedding or other necessaries belonging to any civil prisoner shall be sold to any other prisoner; and any civil prisoner transgressing this regulation shall lose the privilege of purchasing food or receiving it from private sources, for such time as the superintendent thinks proper.

Allowance of clothing and bedding.

36. Every civil prisoner unable to provide himself with sufficient clothing and bedding, shall be supplied by the superintendent with such clothing and bedding as may be necessary.

Judgment creditor to defray such allowance.

When any such prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall be liable to pay to the superintendent on demand the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner shall be released.

CHAPTER VII.

EMPLOYMENT OF PRISONERS.

Work and earnings of civil prisoners.

37. Civil prisoners may, with the superintendent's permission, work and follow their respective trades and professions.

Civil prisoners finding their own implements and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements, or are maintained at the

Sections 38—41.

expense of the prison, shall be subject to a deduction, to be determined by the superintendent, for the use of implements and the cost of maintenance.

38. The medical officer shall, from time to time, examine the labouring prisoners while they are employed, and shall enter in his journal the name of any prisoner whose health he thinks likely to be injured by a continuance at hard labour, and thereupon such prisoner shall not again be employed at such labour until the medical officer certifies that he is fit for such employment.

Examination by medical officer of labouring prisoners.

But if the medical officer certifies that such prisoner may without detriment to his health be employed on some lighter kind of labour, it shall be lawful for the gaoler so to employ him.

39. Provision shall be made by the superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment.

Employment of prisoners sentenced to simple imprisonment.

The superintendent shall make rules as to the amount and nature of such employment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work, excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such prisoners.

CHAPTER VIII.

HEALTH OF PRISONERS.

40. The names of prisoners desiring to see the medical officer or appearing out of health in mind or body shall be reported by the officer attending them to the gaoler.

Names of sick prisoners to be reported to gaoler. Gaoler to report them to medical officer.

The gaoler shall, without delay, call the attention of the medical officer to any prisoner desiring to see him, or who is ill, or whose state of mind or body appears to require attention and shall carry into effect the medical officer's written directions respecting alterations of the discipline or treatment of any such prisoner.

41. All directions given by the medical officer in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the medical officer himself or under his superintendence, shall be entered day by day in his journal,

Entry of directions by medical officer in journal.

Sections 42—45.

which shall have a separate column wherein entries shall be made by the gaoler, stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the gaoler thinks fit to make, and the date of the entry.

Infirmaries.

42. In every prison an infirmary or proper place for the reception of sick prisoners shall be provided.

CHAPTER IX.

VISITS TO AND CORRESPONDENCE OF PRISONERS.

Visits to
prisoners.

43. Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom prisoners before trial may desire to communicate.

Correspond-
ence of pri-
soners.

The Local Government shall also impose such restrictions upon the communication and correspondence of prisoners with their friends as it thinks necessary for the maintenance of good order and discipline.

Power of
gaoler as to
visitors.

44. The gaoler may demand the name and address of any visitor to a prisoner; and, when the gaoler has any ground for suspicion, may search visitors, or cause them to be searched, but the search shall not be in the presence of any prisoner or of another visitor.

In case of any such visitor refusing to be searched, the gaoler may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in his journal.

CHAPTER X.

OFFENCES IN RELATION TO PRISONS.

Carrying
liquor,
tobacco or
drugs into
prison.

45. Whoever, contrary to the regulations of the prison, brings, throws, or attempts by any means whatever to introduce into any prison, or any place provided under section 5 for the temporary shelter and safe custody of prisoners, any spirituous or fermented liquor, or tobacco, or intoxicating or poisonous drug,

Suffering
liquor,
tobacco or
drugs to be
sold or used
in prison.

and every officer of a prison who knowingly suffers any such liquor, tobacco or drug to be sold or used in such prison or place contrary to such regulations,

Sections 46—48.

and whoever, contrary to such regulations, conveys, or attempts to convey, any letter or other article not allowed by such regulations into or out of any such prison or place,

Carrying letters into and out of prison,

and whoever abets within the meaning of the Indian Penal Code any offence made punishable by this section,

Abetment of such offences

shall, on conviction before a Magistrate, be liable to rigorous imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

46. The superintendent shall cause to be affixed, in a conspicuous place outside the prison or the place provided as aforesaid, a notice setting forth the penalties incurred by persons committing any offence under section 45.

Notice of penalties to be placed outside prison.

CHAPTER XI.

PRISON-OFFENCES.

47. The following acts are declared to be offences against prison-discipline :—

List of prison offences.

(1) wilful disobedience to the regulations of the prison by any prisoner ;

(2) assaults or use of criminal force by any prisoner ;

(3) insulting or threatening language by any prisoner to any officer or prisoner ;

(4) indecent or disorderly behaviour by any prisoner ;

(5) wilfully disabling himself from labour ;

(6) contumaciously refusing to work ;

(7) filing or cutting irons or bars ;

(8) idleness or negligence at work by any convicted criminal prisoner ;

(9) wilful mismanagement of work by any convicted criminal prisoner ;

(10) wilful damage to prison-property ;

(11) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

48. The superintendent may examine any person touching such offences, and determine thereupon, and punish such offences—

Superintendent's power to punish prison offenders.

(1) by imprisoning the offender in solitary confinement for any time not exceeding seven days ;

(2) by ordering the offender for any time not exceeding three days to close confinement, to be there kept upon a diet reduced to such extent as the Local Government shall prescribe ;

Sections 49—51.

(3) by corporal punishment not exceeding thirty stripes of a ratan ; or

(4) where the offender is not sentenced to rigorous imprisonment by hard labour for any time not exceeding seven days.

The gaoler shall enter in a separate book, called the punishment-book, a statement of the nature of any offence that has been punished under this section, with the addition of the name of the offender, the date of the offence, and the amount of punishment inflicted. Such statement shall be signed by the superintendent.

Punishment
of prisoners
by Magist-
rate.

49. If any prisoner is guilty of repeated offences against prison-discipline, or is guilty of any offence against prison-discipline which the superintendent thinks is not adequately punishable under section 48, the superintendent shall report the same to the Magistrate of the district or any Magistrate empowered to receive complaints without reference by the Magistrate of the district.

Such Magistrate shall have power to inquire upon oath and to determine concerning any matter so reported to him, and to sentence the offender to be punished—

by confinement in a punishment-cell or in irons for any term not exceeding six months,

or by corporal punishment not exceeding thirty stripes of a ratan,

or by rigorous imprisonment for a term not exceeding six months, such term to be in addition to the term for which he is undergoing imprisonment.

Nothing in this or the last preceding section shall authorize the infliction of corporal punishment, or confinement in irons, on any female prisoner or any civil prisoner.

Corporal
punishment.

50. All corporal punishment within the prison shall be inflicted in the presence of the superintendent, subject to the law for the time being in force relating to the infliction of corporal punishment and the precautions to be taken in reference thereto.

Penalty on
officers ill-
treating
prisoners or
violating
rules.

51. Every gaoler and subordinate officer of a prison ill-treating any prisoner, or wilfully violating or neglecting any rule contained in this Act or made under section 54, shall be liable, on conviction before the superintendent, to fine not exceeding one hundred rupees, or, on conviction before a Magistrate not being the superintendent, to fine not exceeding two hundred rupees, or rigorous imprisonment for a term not exceeding one month, or both.

Sections 52—54.

Any fine imposed by the superintendent under this section may be recovered, either by deductions from the convicted officer's salary and allowances, or under the law for the time being in force for the recovery of fines.

No person shall, under this section, be punished twice for the same offence.

CHAPTER XII.

MISCELLANEOUS.

52. Whenever the superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, the superintendent may so confine them. Confinement of prisoners in irons.

53. Except in case of urgent necessity, no prisoner shall be put in irons or under mechanical restraint by the gaoler of his own authority, and notice thereof shall be forthwith given to the superintendent. Confinement in irons by gaoler of his own authority.

Except in case of urgent necessity no prisoner shall be kept in irons or under mechanical restraint for more than twenty-four hours, without an order in writing from the superintendent specifying the cause thereof, and the time during which the prisoner is to be kept in irons or under mechanical restraint. Such order shall be kept by the gaoler as his warrant.

54. The Local Government may, from time to time, make rules consistent with this Act— Power to make supplementary prison-rules.

(1) for the government of prisons and for the guidance of all officers appointed hereunder :

(2) as to sales of articles on behalf of prisons or belonging to prisoners, and as to the commission receivable thereon :

(3) as to the food and clothing of criminal prisoners :

(4) for the employment and control of convicts within or without prisons, and for the guidance of the guards in charge of such convicts :

(5) for remission of sentences :

(6) for rewards for good conduct ; and

(7) for the appointment and guidance of visitors of prisons.

Sections 55-56.

Copies of such rules, so far as they affect the government of prisons, shall be exhibited in some place to which all persons employed within a prison have access.

Present rules.

55. All rules now in force relating to any of the matters mentioned in sections 14, 31, 39 and 54 shall, so far as such rules are consistent with this Act, be deemed to have been made under those sections respectively.

Exercise of
powers of
superintend-
ent.

56. All or any of the powers and duties conferred and imposed by this Act on a superintendent may be exercised and performed by such other officer as the Local Government from time to time appoints in this behalf.

[SCHEDULE.] *Omitted along with section 2.*

ACT No. I OF 1871.

*Notification by the Government of India, Foreign Department
Judicial, No. 58 J., dated Fort William, 5th April 1872.*

His Excellency the Viceroy and Governor-General in Council has been pleased to extend the provisions of Act I of 1871. "The Cattle Trespass Act," to the Province of Mysore.

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ACT No. I OF 1871.

RECEIVED THE GOVERNOR GENERAL'S ASSENT ON 13TH
JANUARY 1871.

*An Act to consolidate and amend the law relating to
Trespasses by Cattle.*

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle ; it is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

[a] 1. (1) This Act may be called the Cattle Trespass Act, 1871 ; and

Title and extent.

(2) It extends to the whole of the Territories of Mysore except such local areas as the Government of Mysore, by notification in the official Gazette, may from time to time exclude from its operation.

(3) The Government of Mysore may at any time, by notification in the official Gazette, cancel or vary a notification under sub-section (2)

[b] 2. The Acts mentioned in the schedule hereto annexed are repealed.

Repeal of Acts.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

References to repealed Acts.

All pounds established, pound-keepers appointed, and villages determined, under Act No. III of 1857 (*relating to trespasses by cattle*) shall be deemed to be respectively established, appointed, and determined under this Act].

3. In this Act—

‘ Officer of Police ’ includes also village-watchman, and
‘ Cattle ’ includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids, [c] and

Interpretation clause.

‘ Local authority ’ means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and

‘ Local fund ’ means any fund under the control or management of a local authority. [c]

[a] This section was substituted for the original s. 1 by Regulation VIII of 1892, s. 1.

[b] This section was inadvertently omitted to be repealed by Regulation VIII of 1892, though inapplicable to Mysore.

[c c] These words were added to s. 3 by Regulation VIII of 1892, s. 2.

Sections 4—8.

CHAPTER II.

POUNDS AND POUND-KEEPERS.

Establish-
ment of
pounds.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the [a] Local Government, [a] from time to time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

Control of
pounds.
Rates of
charge for
feeding im-
pounded
cattle.

5. The pounds shall be under the control of the Magistrate of the District, and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

Appointment
of *ex-officio*
pound-keep-
ers.

6. [b] The heads of villages shall be *ex-officio* keepers of village pounds :

Provided that, where it is deemed necessary, the Magistrate of the District shall be competent to relieve the Head of the village of his charge and appoint another instead.[b]

Suspension or
removal of
pound-keep-
ers.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Pound-keep-
ers may hold
other offices.

Any pound-keeper may hold simultaneously any other office under Government.

Pound-keep-
ers to be pub-
lic servants.

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.

DUTIES OF POUND-KEEPERS.

To keep
registers and
furnish re-
turns.

7. Every pound-keeper shall keep such registers and furnish such returns as the [a] Local Government [a] from time to time directs.

To register
seizures.

8. When cattle are brought to a pound, the pound-keeper shall enter in his register—

- (a) the number and description of the animals,
 - (b) the day and hour on and at which they were so brought,
 - (c) the name and residence of the seizer, and
 - (d) the name and residence of the owner, if known,
- and shall give the seizer or his agent a copy of the entry.

[a-a] *Sic*: should be "Government of Mysore." Provision for the necessary substitution has by inadvertence been omitted to be made in Regulation VIII of 1892.

[b-b] These words were substituted for the original first paragraph and its proviso by Regulation VIII of 1892, s. 3.

Sections 9—12.

9. The pound-keeper shall take charge of, feed and wate the cattle until they are disposed of as hereinafter directed. To take charge of and feed cattle.

CHAPTER III.

IMPOUNDING CATTLE.

10. The cultivator or occupier of any land, Cattle da-
maging land.
or any person who has advanced cash for the cultivation of the crop or produce on any land,
or the vendee or mortgagee of such crop or produce, or any part thereof,

may seize or cause to be seized any cattle trespassing on such land and doing damage thereto or to any crop or produce thereon, and [a] send them or cause them to be sent within twenty-four hours [a] to the pound established for the village in which the land is situate.

All officers of Police shall, when required, aid in preventing (a) resistance to such seizures and (b) rescues from persons making such seizures. Police to aid seizures.

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like, and officers of police may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals drainage-works or embankments, or found straying thereon, Cattle da-
maging pub-
lic roads,
canals and
embank-
ments.

and shall [b] send them or cause them to be sent within twenty-four hours [b] to the nearest pound.

12. For every head of cattle impounded as aforesaid. Fines for
cattle im-
pounded.
the pound-keeper shall levy a fine according to the following scale :—

Elephant	..	..	Two rupees.
Camel or buffalo	..	..	Eight annas.
Horse, mare, gelding, pony, colt, filly,, mule, bull, bullock, cow or heifer	..	..	Four annas.
Calf, ass or pig	..	..	Two annas.
Ram, ewe, sheep, lamb, goat or kid ..	..	..	One anna.

[a-a] These words in s. 10 were substituted for the words "take them or cause them to be taken without unnecessary delay" by Regulation VIII of 1892, s. 4.

[b-b] These words in s. 11 were substituted for the words "take them without unnecessary delay" by Regulation VIII of 1892, s. 5.

Sections 13-14.

[a] Provided that, when it appears to the Government of Mysore from the report of a Magistrate of a District, or on the representation of a local authority, that, in any local area subject to the jurisdiction or control of such Magistrate or authority, cattle are habitually allowed to trespass on land and damage crops or other produce thereon, the Government of Mysore may, by notification in the official Gazette, direct that, for every head of cattle of any kind specified therein which may be seized within such local area and impounded as aforesaid, the pound-keeper shall levy such fine, not exceeding double the fine mentioned in the forgoing scale, as may be prescribed in the notification.

All fines so levied shall be sent to the Magistrate of the District through such officer as the [b] Local Government [b] from time to time directs.

List of fines
and charges
for feeding.

A list of the fines and of the rates of charges for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound.

[c] The Government of Mysore may at any time, by notification in the official Gazette, cancel or vary a notification under the proviso to the first paragraph of this section.

CHAPTER IV.

DELIVERY OR SALE OF CATTLE.

Procedure
when owner
claims the
cattle and
pays fines
and charges.

13. If the owner of impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

Procedure
if cattle be
not claimed
within a week

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

[a] This proviso was added to the first paragraph of s. 12 by Regulation VIII of 1892, s. 6 (1).

[b-b] *Vide* foot-note [a-a] on page 118.

[c] This paragraph was added to s. 12 by Regulation VIII of 1892, s. 6. (2)

Sections 15-16.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time, and subject to such conditions as the Magistrate of the District by general or special order from time to time directs ;

Provided that if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal and that the owner is about to make a complaint under section twenty, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

Delivery to owner disputing legality of seizure but making deposit.

16. If the owner or his agent appear, and refuse or omit to pay or (in the case mentioned in section fifteen) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time, and subject to such conditions, as are referred to in section fourteen.

Procedure when owner refuses or omits to pay the fines and expenses.

The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Deduction of fines and expenses.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing —

Delivery of unsold cattle and balance of proceeds.

- (a) the number of cattle seized,
- (b) the time during which they have been impounded,
- (c) the amount of fines and charges incurred,
- (d) the number of cattle sold,
- (e) the proceeds of sale, and
- (f) the manner in which those proceeds have been disposed of.

Sections 17—20.

Receipt.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Disposal of
fines, expenses
and surplus
proceeds
of sale.

17. The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

The charges for feeding and watering deducted under section sixteen shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section thirteen.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

Application
of fines and
unclaimed
proceeds of
sales.

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle, shall be paid—

(a) the salaries allowed to pound-keepers under the orders of the [a] Local Government [a] ;

(b) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act ;

and the surplus (if any) shall be applied, under orders of the [a] Local Government, [a] to the construction and repair of roads and bridges and to other purposes of public utility.

Officers and
pound-keepers
not to purchase
cattle at
sales under
Act.

19. No officer of police, or other officer or pound-keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle at a sale under this Act.

Pound-keepers
when not to release
impounded
cattle.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

[b] CHAPTER V.

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

Power to
make com-
plaints.

20. Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate

[a-a] *vide* foot-note [a-a] on page 207.

[b] This chapter was substituted for the original chapter V by Regulation III of 1892, s. 7.

Sections 21—24.

of the District, or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate. Procedure on complaint.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case.

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle : Compensation for illegal seizure or detention.

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle. Release of cattle.

23. The compensation, fines and expenses mentioned in section twenty-two may be recovered as if they were fines imposed by the Magistrate. Recovery of compensation.

CHAPTER VI.

PENALTIES.

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act, Penalty for forcibly opposing the seizure of cattle or rescuing the same.

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

Sections 24—28.

Recovery of
penalty for
mischief com-
mitted by
causing cattle
to trespass.

25. Any fine imposed [a] under the next following section or [a] for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Penalty for
damage
caused to
land or crops
or public
roads by pigs.

26. Any owner or keeper of pigs, who through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

[b] The Government of Mysore by notification in the official Gazette, may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words 'fifty rupees' were substituted for the words 'ten rupees' or as if there were both such reference and such substitution.

[c] The Government of Mysore may at any time, by notification in the official Gazette, cancel or vary a notification under this section.

Penalty on
pound-
keeper failing
to perform
duties.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section nineteen, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary.

Application
of fines
recovered
under section
25, 26, or 27.

28. All fines recovered under section twenty-five, section twenty-six or section twenty-seven may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

[a-a] These words in s. 25 were inserted by Regulation VIII of 1892, s. 8.

[b] This paragraph was added to s. 26 by Regulation VIII of 1892, s. 9.

[c] This paragraph was added to s. 26 by Regulation VIII of 1892, s. 9.

Sections 29—31.

CHAPTER VII.

SUITS FOR COMPENSATION.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court. Saving of right to sue for compensation.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit. Set-off.

[a] CHAPTER VIII.

SUPPLEMENTAL.

31. The Government of Mysore may, from time to time, by notification in the official Gazette—

- (a) transfer to any local authority, within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Government of Mysore or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority, or

Power for Government of Mysore to transfer certain functions to local authority and direct credit of surplus receipts to local fund.

- (b) direct that the whole or any part of the surplus accruing in any district under section eighteen of this Act shall be placed to the credit of such local fund or funds as may be formed for any local area or local areas comprised in that district,

and may, from time to time, by notification in the official Gazette, cancel or vary any notification under this section.

[b] [SCHEDULE.]

(See section 2.)

Number and year	Title of Act
III of 1857. . .	An Act relating to trespasses by cattle.
V of 1860 . .	An Act to amend Act III of 1857, (relating to trespasses by cattle).
XXII of 1861 . .	An Act to amend Act III of 1857 (relating to trespasses by cattle).

[a] Chapter VIII was added by Regulation VIII of 1892, s. 10.

[b] This schedule was inadvertently omitted to be repealed by Regulation VIII of 1892. Vide note (b) on page 206.

Sections 1-2.

ACT No. XXIII OF 1871.

*Notification by the Government of India, Foreign Department,
Judicial, No. 169, dated Simla, the 22nd August 1873.*

His Excellency the Viceroy and Governor General in Council is pleased to extend the provisions of Act XXIII of 1871 (The Pensions Act) to the Province of Mysore subject to the following modifications, namely—

Section 2 together with the schedule mentioned therein, and also clause 2 of section 7, to be omitted.

Wherever the words “ Local Government ” “ Chief Revenue authority ” and “ Chief Controlling Revenue-authority ” occur in the Act, the words “ Chief Commissioner ” to be substituted.*

In section 5 the words “ subject to the general control of the Local Government,” and in section 14 the words “ with the consent of the Local Government,” to be omitted.

(RECEIVED THE ASSENT OF THE GOVERNOR GENERAL
ON THE 8TH AUGUST 1871).

*An Act to consolidate and amend the law relating to pensions
and grants by Government of money or land-revenue.*

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to pensions and grants by Government of money or land-revenue ; It is hereby enacted as follows :—

I.—Preliminary.

Short-title.

Extent of Act

Commence-
ment.

1. This Act may be called “ The Pensions Act, 1871 ”:

It extends to the whole of British India :

And it shall come into force on the date of the passing thereof but not so as to affect any suit in respect of a pension or grant of money or land-revenue which may have been instituted before such date.

2. (*Repeal of enactments.*) *Omitted as directed by Notification No. 169, dated the 22nd August 1873.*

* As to this, however, see Notification of the Government of Mysore No. 153, dated the 2nd September 1881 according to which the expression “ Local Government ” occurring in any act in force in Mysore is to denote “ the Government of His Highness the Maharaja of Mysore.” The words “ Chief Revenue authority.” and “ Chief Controlling Revenue authority ” in the present Act must, apparently, be construed in a similar manner: and hence the substitution indicated above has not been made.

Sections 3—8.

3. In this Act, the expression “grant of money or land revenue” includes anything payable on the part of Government in respect of any right, privilege, perquisite or office.

Interpretation-clause.

II.—Rights to Pensions.

4. Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment. claim or right for which such pension or grant may have been substituted.

Bar of suits, relating to pension.

5. Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the Local Government; and such Collector, Deputy Commissioner or other officer shall dispose of such claim in accordance with such rules as the Chief Revenue-authority may [a] from time to time prescribe in this behalf.

Claims to be made to Collector or other authorized officer.

6. A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer authorized in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

Civil Court empowered to take cognizance of such claims.

7. Nothing in sections four and six applies to—

(1) any inam of the class referred to in the first section of Madras Act No. IV of 1862; [b]

Pensions for lands held under grants in perpetuity.

III.—Mode of Payment.

8. All pensions or grants by Government of money or land-revenue shall be paid by the Collector or the Deputy Commissioner or other authorized officer, subject to such rules as may, from time to time, be prescribed by the Chief Controlling Revenue-authority.

Payment to be made by Collector or other authorized officer

[a] The words “subject to the general control of the Local Government” in section 5 have been omitted as directed by Notification No. 169, dated the 22nd August 1873.

[b] Clause (2) of section 7 has been omitted as directed by Notification No. 169, dated the 22nd August 1873.

Sections 9-14.

Saving of
rights of
grantees of
land revenue.

9. Nothing in sections four and eight shall affect the right of a grantee of land-revenue, whose claim to such grant is admitted by Government, to recover such revenue from the persons liable to pay the same under any law for the time being in force for the recovery of the rent of land.

Commuta-
tion of pen-
sions.

10. The Local Government may, with the consent of the holder, order the whole or any part of his pension or grant of money or land revenue to be commuted for a lump sum on such terms as may seem fit.

IV.—Miscellaneous.

Exemption of
pension from
attachment.

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and no money due or to become due on account of any such pension or allowance,

shall be liable to seizure, attachment or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

Assignments
etc., in antici-
pation of
pension, to
be void.

12. All assignments, agreements, orders, sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in section eleven, in respect of any money not payable at or before the making thereof, on account of any such pension, pay or allowance, or for giving or assigning any future interest therein, are null and void.

Reward to
informers.

13. Whoever proves to the satisfaction of the Local Government that any pension is fraudulently or unduly received by the person enjoying the benefit thereof, shall be entitled to a reward equivalent to the amount of such pension for the period of six months.

Power to
make rules.

14. The Chief Controlling Revenue-authority may[a] from time to time make rules consistent with this Act respecting all or any of the following matters :—

- (1) the place and times at which, and the person to whom any pension shall be paid,
- (2) inquiries into the identity of claimants,
- (3) records to be kept on the subject of pensions,

[a] The words " with the consent of the Local Government " in section 14 have been omitted as directed by Notification No. 169, dated the 22nd August 1873.

- (4) transimission of such records,
- (5) correction of such records,
- (6) delivery of certificates to pensioners,
- (7) registers of such certificates,
- (8) reference to the Civil Court under section six, of persons claiming a right of succession to, or participation in, pensions or grants of money or land revenue payable by Government,

and generally for the guidance of officers under this Act.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

[*SCHEDULE.*] *Omitted as directed by Notification No. 169, dated the 22nd August 1873.*

ACT No. IX OF 1872.

*Notification by the Government of India, Foreign Department,
Judicial, No. 47 J., dated Simla, the 27th May 1878.*

The Governor-General in Council is pleased to direct that the following Acts* subject to the undermentioned modifications, shall become law in the Territories of Mysore from the 1st June 1878 :—

Act IX of 1872 (The Indian Contract Act), except the Explanation appended to section 265. The word “ Court ” in this section shall be taken to mean “ a Court not inferior to the Court of the Judicial Assistant Commissioner,”†

Act I of 1877¶ (The Specific Relief Act) except Chapter VIII.

* So much of this Notification as extended Act X of 1877 (The Code of Civil Procedure) to Mysore was cancelled by Regulation II of 1884, s. 52.

† But see Regulation VI of 1892, which substitutes a new section for s. 265

¶ For Act I of 1877, *vide infra*.

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ACT No. IX OF 1872.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL
ON THE 25TH APRIL 1872.

The Indian Contract Act, 1872.

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts ; It is hereby enacted as follows :— Preamble.

PRELIMINARY.

1. This Act may be called the Indian Contract Act, 1872. short title.

It extends to the whole of British India, and it shall come into force on the first day of September 1872. Extent.
Commence-
ment.

The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof ; but nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act. Enactments
repealed.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :— Interpreta-
tion-clause.

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.
- (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise :
- (c) The person making the proposal is called the " promisor," and the person accepting the proposal is called the " promisee ":
- (d) When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise :

Sections 3-4.

- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement :
- (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises :
- (g) An agreement not enforceable by law is said to be void :
- (h) An agreement enforceable by law is a contract :
- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract :
- (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION
OF PROPOSALS.

Communica-
tion, accept-
ance and re-
vocation of
proposals.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Communica-
tion when
complete.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete, —

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor ;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete, —

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it ;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(a) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter

Sections 5—7.

(b) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete.

as against A, when the letter is posted ;

as against B, when the letter is received by A.

(c) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched.

It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

Revocation
of proposals
and accept-
ances.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

6. A proposal is revoked—

- (1) by the communication of notice of revocation by the proposer to the other party ;
- (2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance ;
- (3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or
- (4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Revocation
how made.

7. In order to convert a proposal into a promise the acceptance must—

- (1) be absolute and unqualified ;
- (2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer

Acceptance
must be ab-
solute.

Sections 8—12.

may within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise ; but, if he fails to do so, he accepts the acceptance.

Acceptance
by perform-
ing condi-
tions, or re-
ceiving con-
sideration.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises,
express and
implied.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID
AGREEMENTS.

What agree-
ments are
contracts.

10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Who are
competent to
contract.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a
sound mind
for the pur-
poses of con-
tracting.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

*Sections 13—16.**Illustrations.*

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense. “Consent” defined.

14. Consent is said to be free when it is not caused by— “Free consent” defined.

- (1) coercion, as defined in section 15, or
- (2) undue influence, as defined in section 16, or
- (3) fraud, as defined in section 17, or
- (4) misrepresentation, as defined in section 18, or
- (5) mistake subject to the provisions of sections 20, 21 and 22

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

15. “Coercion” is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. “Coercion” defined.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where the act was done.

***16.** (1) A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. “Undue influence” defined.

* This section was substituted for the original by Section 2 Regulation IV of 1922.

Section 17.

- (2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—
- (a) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other ; or
 - (b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
- (3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in the sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872, as applied to Mysore.

Illustrations.

(a) A having advanced money to his son B, during his minority, upon B's coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

“Fraud”
defined.

17. “Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :—

- (1) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true ;

Sections 18-19.

- (2) the active concealment of a fact by one having knowledge or belief of the fact ;
- (3) a promise made without any intention of performing it ;
- (4) any other act fitted to deceive ;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations.

(a) A sells, by auction, to B a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c) B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.

(d) A and B, being traders enter upon a contract. A has private information of a change in prices in which would affect B's willingness to proceed with the contract. A is not bound to inform B.

18. "Misrepresentation" means and includes—

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true ;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him ;
- (3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

"Misrepresentation" defined.

19. When consent to an agreement is caused by coercion [a] fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Voidability of agreements without free consent.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Section 19A.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby, induces B to buy the factory. The contract is voidable at the option of B.

(b) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c) A fraudulently informs B that A's estate is free from encumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.

(d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(e) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Power to set aside contract induced by undue influence.

***19A.** When consent to an agreement is caused by (a) undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(a) Here the words undue (influence) were repealed by section 3 of Regulation IV of 1912.

* This section was inserted by Section 3 of Regulation IV of 1912.

Sections 20—21.

(b) A, a money-lender, advances Rs. 100 to B an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Agreement void where both parties are under mistake as to matter of fact

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India ; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Effect of mistake as to law.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation : the contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France : the contract is voidable.

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

Contract caused by mistake of one party as to matter of fact.

23. The consideration or object of an agreement is lawful, unless—

What considerations and objects are lawful and what not.

it is forbidden by law ; or

it is of such a nature that, if permitted, it would defeat provisions of any law ; or

is fraudulent ; or

involves or implies injury to the person or property of another ; or

Section 23.

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations.

(a) A agrees to sell his house to B for 10,000 rupees. Here, B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(d) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment, by A, on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

Sections 24-25.

Void Agreements.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Agreements void, if considerations and objects unlawful in part.

Illustrations.

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

25. An agreement made without consideration is void, unless—

Agreement without consideration, void, unless— it is in writing and registered.

(1) it is expressed in writing and registered under the Law for the time being in force for the registration of [documents] and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

or is a promise to compensate for something done.

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

or is a promise to pay a debt barred by limitation law.

In any of these cases such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was given.

Illustrations.

(a) A promises, for no consideration, to give to A Rs. 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promises to B into writing and registers it. This is a contract.

[a] This word was substituted for the original word 'assurances' by section 4 of Regulation IV of 1912.

Sections 26—28.

(c) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court shall take into account in considering whether or not A's consent was freely given.

Agreement
in restraint
of marriage
void.

26. Every agreement in restraint of the marriage of any person, other than a minor, is void.

Agreement
in restraint
of trade
void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Saving of
agreement
not to carry
on business
of which
good-will is
sold,

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein: Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

of agreement
between
partners
prior to
dissolution:

Exception 2.—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

or during
continuance
of partner-
ship.

Exception 3.—Partners may agree that some one or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership.

Agreements
in restraint
of legal pro-
ceedings void

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Saving of
contract to
refer to arbi-
tration dis-
pute that
may arise.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that

Sections 29-30.

only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.[a]

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Saving of contract to refer questions that have already arisen.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Agreements void for uncertainty.

Illustrations.

(a) A agrees to sell to B “a hundred tons of oil.” There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c) A, who is a dealer in cocoanut-oil, agrees to sell to B “one hundred tons of oil.” The nature of A’s trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut oil.

(d) A agrees to sell to B “all the grain in my granary at Ramnagar.” There is no uncertainty here to make the agreement void.

(e) A agrees to sell to B “one thousand maunds of rice at a price to be fixed by C.” As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f) A agrees to sell to B “my white horse for rupees five hundred or rupees one thousand.” There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Agreements by way of wager void.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Exception in favour of certain prizes for horse-racing.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294 A of the Indian Penal Code apply.

Section 294A of the Indian Penal Code not affected.

(a) The second clause of exception which was repealed by the Specific Relief Act has been omitted.

Sections 31—34.

CHAPTER III.

OF CONTINGENT CONTRACTS.

“Contingent contract” defined.

31. A “contingent contract” is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustrations.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contracts contingent on an event happening.

32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Illustrations.

(a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

Enforcement of contracts contingent on an event not happening.

33. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Illustrations.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

34. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustrations.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

Sections 35—37.

35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts become void which are contingent on happening of specified event within fixed time.

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

When contracts may be enforced which are contingent on specified event not happening within fixed time.

Illustrations.

(a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year ; and becomes void if the ship is burnt within the year.

(b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Agreements contingent on impossible events void.

Illustrations.

(a) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Obligation of parties to contracts.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

*Sections 38-39.**Illustrations.*

(a) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b) A promises to paint a picture for B by a certain day, at a certain price A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of refusal to accept offer of performance.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions :—

(1) it must be unconditional.

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as offer to all of them.

Illustrations.

A contracts to deliver to B at his warehouse, on the first March 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of refusal of party to perform promise wholly.

39. When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct his acquiescence in its continuance.

Illustrations

(a) A, a singer, enters into a contract with B, the manager of a theatre to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

Sections 40—43.

(b) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night, A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him, through A's failure to sing on the sixth night.

By whom Contracts must be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Person by whom promise is to be performed.

Illustrations.

(a) A promises to pay B a sum of money. A may perform this promise either by personally paying the money to B, or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b) A promises to paint a picture for B. A must perform this promise personally.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Effect of accepting performance from third person.

42. When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Devolution of joint liabilities.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any [*one or more] of such joint promisors to perform the whole of the promise.

Any one of joint promisors may be compelled to perform.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Each promisor may compel contribution.

*These words were substituted for the original word one by section 5 of Regulation IV of 1912.

Sections 44-45.

Sharing of
loss by de-
fault in
contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(a) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect of re-
lease of one
joint pro-
misor.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

Devolution
of joint
rights.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly [a]

Illustrations.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

[a] For an exception to s. 45 in case of Government securities, see Regulation IX of 1894, s. 4.

Sections 46—50.

Time and Place for Performance.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Time for performance of promise where no application is to be made and no time is specified.

Explanation.—The question ‘ what is a reasonable time ’ is, in each particular case, a question of fact.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Time and place for performance of promise where time is specified and no application to be made.

Illustrations.

A promises to deliver goods at B’s warehouse on the first January. On that day A brings the goods to B’s warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Application for performance on certain day to be at proper time and place.

Explanation.—The question ‘ what is a proper time and place ’ is, in each particular case, a question of fact.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Place for performance of promise where no application to be made and no place fixed.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Performance in manner or at time prescribed or sanctioned by promisee.

Illustrations.

(a) B owes A 2,000 rupees. A desires B to pay the amount to A’s account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A’s credit, and this is done by C.

R

Sections 51-52.

Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(d) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

Promisor not bound to perform unless reciprocal promisee ready and willing to perform.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(a) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

(b) A need not deliver the goods unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(c) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promises.

52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order, and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(a) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

Sections 53—55.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Liability of party preventing on which contract is to take effect.

Illustrations.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.

Illustrations.

(a) A hires B's ship to take in and convey from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c) A contract with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

55. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as

Effect of failure to perform at fixed time, in contract in which time is essential,

Section 56.

has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time, but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Agreement to do impossible act.

56. An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations.

(a) A agrees with B to discover treasure by magic. The agreement is void.

(b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

Sections 57—60.

57. Where persons reciprocally promise, firstly, to do certain things which are legal, and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Reciprocal
promise
to do things
legal, and
also other
things illegal

Illustrations.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, viz., to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as gambling house, and is a void agreement.

58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Alternative
promise, one
branch being
illegal.

Illustration.

A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver, rice and a void agreement as to the opium.

Appropriation of Payments.

59. Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Application
of payment
where debt to
be discharged
is not indi-
cated.

Illustrations.

(a) A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred

Application
of payment
where debt to
be discharged
is not indi-
cated.

Sections 61—63.

by the law in force for the time being as to the limitation of suits.

Application
of payment
where neither
party appro-
priates.

61. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Contracts which need not be performed.

Effect of
novation,
rescission and
alteration of
contract.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

(a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) A owes to B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

Promisee
may dispense
with or re-
mit perform-
ance of pro-
mise.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c) A owes B 5,000 rupees, C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(d) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B in satisfaction thereof, accepts the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a

Sections 64-67.

composition {a} of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Consequences
of rescission
of voidable
contract.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Obligation of
person who
has received
advantage
under void
agreement
or contract
that becomes
void.

Illustrations.

(a) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

(c) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules as apply to the communication or revocation of a proposal.

Mode of communicating or
revoking
rescission of
voidable contract.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Effect of
neglect of
promisee to
afford promisor
reasonable
facilities for
performance.

(a) This word was substituted for the original word 'compensation' by Section VI of Regulation IV of 1912.

*Sections 68-70.**Illustration.*

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract if it is caused such neglect or refusal.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED
BY CONTRACT.

Claim for
necessaries
supplied to
person incap-
able of con-
tracting, or
on his ac-
count.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(a) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimburse-
ment of per-
son paying
money due
by another,
in payment
of which he is
interested.

69. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal, on a lease granted by A, the zemindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

Obligation of
person enjoy-
ing benefit of
non-gratui-
tous act.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Illustrations.

(a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

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(b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

71. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee. Responsibility of finder of goods.

72. A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

Illustrations.

(a) A and B jointly owe 100 rupees to C. A alone pays the amount to C and B, not knowing this fact pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Compensation for loss or damage caused by breach of contract.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract. Compensation for failure to discharge obligation resembling those created by contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

*Section 73.**Illustrations.*

(a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B, at the stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, and on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

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(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed but not the loss sustained through the loss of the Government contract.

(j) A having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at Rs. 80 a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k) A contracts with B to make and deliver to B by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of the machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l) A, a builder, contracts, to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house for the rent lost, and for the compensation made to C.

(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market-price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market-price of the first of January and not the profit which would have arisen to B from the sale to C is to be taken into account.

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(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market-price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses with he has been put to in making preparation for the manufacture.

(r) A, a shipowner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Compensation for breach of contract where penalty stipulated for.

***74.** "When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty."

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or under the provisions of any law, or under the orders of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any

* This was substituted for the original paragraph 1 of the section by sub-section (1) of Section 4 of Regulation IV of 1912.

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public duty, or promise to do an act in which the public are interested.

Illustrations.

(a) A contracts with B to pay B 1,000 rupees, if he fails to pay B 500 rupees on a given day. A fails to pay B 500 rupees on that day. B is entitled to recover from A such compensation, not exceeding 1,000 rupees as the Court considers reasonable.

(b) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B 5,000. A practices as a surgeon in Calcutta. B is entitled to such compensation, not exceeding 5,000 rupees as the Court considers reasonable.

(c) A gives a recognizance binding him in a penalty of 500 rupees to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(d) "A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him ten maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver twenty maunds. This is a stipulation by way of penalty and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty."

75. A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Party right-fully rescinding contract entitled to compensation.

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

* These illustrations were added by sub-section (2) of Section 7 of Regulation IV of 1912.

Sections 76—78.

CHAPTER VII.

SALE OF GOODS.

When Property in Goods sold passes.

“Goods” defined.

76. In this chapter, the word “goods” means and includes every kind of moveable property.

“Sale” defined.

77. “Sale” is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

Sale how effected.

78. Sale is effected by offer and acceptance of ascertained goods for price ;

or of a price for ascertained goods ;
together with payment of the price or delivery of the goods ; or with tender, part payment, earnest or part delivery ; or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price or when the earnest is paid or when the whole or part of the goods is delivered.

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations.

(a) B offers to buy A’s horse for 500 rupees. A accepts B’s offer, and delivers the horse to B. The horse becomes B’s property on delivery.

(b) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods and informs A that he approves of them. The goods become B’s when B retains them.

(c) B offers A for his horse 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B’s as soon as the proposal is accepted.

(d) B offers A for his horse 1,000 rupees on a month’s credit. A accepts the offer. The horse becomes B’s as soon as the offer is accepted.

(e) B, on the first January, offers to A for a quantity of rice 2,000 rupees, to be paid on the first March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B’s as soon as the offer is accepted.

Sections 79-82.

79. Where there is a contract for the sale of a thing which has yet to be ascertained, made or finished, the ownership of the thing is not transferred to the buyer, until it is ascertained, made or finished.

Transfer of ownership of thing sold, which has yet to be ascertained, made or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

80. Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Completion of sale of goods which the seller is to put into state in which buyer is to take them.

Illustration.

A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up and delivered.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Completion of sale of goods when seller has to do anything thereto in order to ascertain price.

Illustrations.

(a) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(b) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's ground to B's place of deposit. Here nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.

Completion of sale when goods are unascertained at date of contract.

Illustration.

A agrees to sell to B 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

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Ascertain-
ment of goods
by subse-
quent appro-
priation.

83. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party, for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Illustration.

A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, contracts, to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B, the sugar becomes the property of B.

Ascertain-
ment of goods
by seller's
selection.

84. Where the goods are not ascertained at the time of making the contract of sale, and by the terms of the contract the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and by his doing so the goods are ascertained.

Illustration.

B agrees with A to purchase of him, at a stated price to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

Transfer of
ownership of
moveable pro-
perty, when
sold together
with immove-
able.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immovable property.

Illustration.

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer to bear
loss after
goods have
become his
property.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations.

(a) B offers, and A accepts, 100 rupees for a stack of firewood standing on A's premises, the firewood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the firewood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

Sections 87—89.

(b) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls the loss falls on the seller; if afterwards on A.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract, by the seller, or by the buyer with the seller's assent.

•Transfer of ownership of goods agreed while non-existent.

Illustrations.

(a) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(b) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under this contract, B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(c) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crop then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

88. A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Contract to sell and deliver, at a future day, goods not in sellers' possession at date of contract.

Illustration.

A contracts, on the first January, to sell B 50 shares in the East India Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares. The Contract is valid.

89. Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

Determination of price not fixed by contract.

Illustration.

B, living at Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price.

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The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

Delivery.

Delivery how made.

90. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Illustrations.

(a) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

(b) B, in England, orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(c) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown, in order that he may get the goods. This is a delivery.

(d) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(e) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(f) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the 5 tons selected by A.

Effect of delivery to wharfinger or carrier.

91. A delivery to a wharfinger or carrier of the goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by-railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

Sections 92—96.

92. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Effect of part delivery.

Illustrations.

(a) A ship arrives in a harbour laden with a cargo consigned to A the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(b) A sells to B a stack of firewood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the firewood. This has not the legal effect of delivery of the whole.

(c) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

93. In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Seller not bound to deliver until buyer applies for delivery.

94. In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale; and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, but the place at which they are produced.

Place of delivery.

Seller's Lien.

95. Unless a contrary intention appears by the contract, a seller has a lien on sold goods as long as they remain in his possession and the price or any part of it remains unpaid.

Seller's lien.

96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

Lien where payment to be made at a future day, but no time fixed for delivery.

Sections 97—100

"Insolvency"
defined.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent. A may retain the goods for the price.

Seller's lien
where pay-
ment to be
made at fu-
ture day and
buyer allows
goods to re-
main in
seller's
possession.

97. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Illustrations.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

Seller's lien
against sub-
sequent buyer

98. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

Stoppage in Transit.

Power of sel-
ler to stop in
transit.

99. A seller who has parted with the possession of the goods, and has not received the whole price may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

When goods
are to be
deemed in
transit.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

Illustrations.

(a) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(b) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

Sections 101—103.

(c) B, who lives at Puna, orders goods of A, at Bombay. A sends them to Puna by C, a carrier appointed by B. The goods arrive at Puna and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(7) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(8) B, a merchant of London orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

101. The seller's right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's reselling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

Continuance of right of stoppage.

102. The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods, assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Cessation of right on assignment by buyer of bill of lading.

Illustrations.

(a) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and, while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(b) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

103. Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Stoppage where bill of lading is pledged to secure specific advance.

Illustrations.

(a) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

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(b) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure the sum of 5,000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

Stoppage how effected.

104. The seller may effect stoppage in transit, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depositary in whose possession they are.

Notice of seller's claim.

105. Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence may communicate it to his servant in time to prevent a delivery to the buyer.

Right of seller on stoppage.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A sells to B 100 bales of cotton : 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

Resale.

Resale on buyer's failure to perform.

107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, resell them, after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit which may occur on such resale

Title.

Title conveyed by seller of goods to buyer.

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases :—

Exception 1.—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery,

Section.—108.

or other document showing title to goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2.—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

Exception 3.—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(a) A buys from B, in good faith, a cow which B has stolen from C. The property in the cow is not transferred to A.

(b) A, a merchant, entrusts B his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(c) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d) A, B and C are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bona fide*. The property in the cow is transferred to D.

Sections 109—113.

(e) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

Warranty.

Seller's responsibility for badness of title.

109. If the buyer, or any person claiming under him is, by reason of the invalidity of the seller's title, deprived of the thing sold the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

Establishment of implied warranty of goodness or quality.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Warranty of soundness implied on sale of provisions.

111. On the sale of provisions, there is an implied warranty that they are sound.

Warranty of bulk implied on sale of goods by sample.

112. On the sale of goods by sample there is an implied warranty that the bulk is equal in quality to the sample.

Warranty implied where goods are sold as being of a certain denomination.

113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk.

Explanation.—But if the contract specially states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

Illustrations.

(a) A, at Calcutta, sells to B twelve bags of "waste silk," then on its way from Murshedabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

(b) A buys, by sample and after having inspected the bulk, 100 bales of "Fair Bengal" cotton. The cotton proves not to be such as is known in the market as "Fair Bengal": there is a breach of warranty.

Sections 114—118.

114. Where goods have been ordered for a specified purpose, for which goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.

Warranty where goods ordered for a specified purpose.

Illustration.

B orders of A, a copper manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Warranty on sale of article of well-known ascertained kind.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton — "Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

116. In the absence of fraud and of any express warranty of quality, the seller of an article which, answers the description under which it was sold is not responsible for a latent defect in it.

Seller when not responsible for latent defects.

Illustration.

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware. A is not responsible for this.

117. Where a specific article, sold with a warranty has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable; but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Buyer's right on breach of warranty.

Illustration.

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

118. Where there has been a contract, with a warranty, for the sale of goods which, at the time of the contract were not ascertained or not in existence, and the warranty is broken, the buyer may.

Right of buyer on breach of warranty in respect of goods not ascertained.

accept the goods or refuse to accept the goods when tendered,

Sections 119—121.

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them ; provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty ; but if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(a) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample ; B afterwards uses two sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

Miscellaneous.

When buyer may refuse to accept, if goods not ordered are sent with goods ordered.

119. When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

Illustration.

A orders B specific articles of china. B sends these articles to A in a hamper, with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

Effect of wrongful refusal to accept.

120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Right of seller as to rescission, on failure of buyer to pay price at time fixed.

121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

Sections 122—126.

122. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Sale and transfer of goods sold by auction.

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

Effect of use, by seller, of pretended biddings to raise price.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

* Contract of indemnity defined.

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

Rights of indemnity holder when sued

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies ;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit ;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

126. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee

"Contract of guarantee," "surety," "principal debtor," and "creditor,"

Sections 127-128.

is called the "surety:" the person in respect of whose default the guarantee is given is called the "principal debtor," and the person to whom the guarantee is given is called the "creditor." A guarantee may be either oral or written.

Consideration for guarantee.

126. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Illustrations.

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

Surety's liability.

127. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill but also for any interest and charges which may have become due on it.

"Continuing guarantee."

128. A guarantee which extends to a series of transactions is called a "continuing guarantee."

Illustrations.

(a) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards, B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Sections 130—133.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Revocation of continuing guarantee.

Illustrations.

(a) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(b) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Revocation of continuing guarantee by surety's death

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default.

Illustrations.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

133. Any variance, made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.

Discharge of surety by variance in terms of contract.

Illustrations.

(a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

Sections 134-135.

(b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the latter Act.

(c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards, B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the 1st of March.

Discharge of surety by release or discharge of principal debtor.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(a) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract, B diverts a stream of water which is necessary for irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to or agrees not to sue, principal debtor.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to or not to sue, the principal debtor discharges the surety, unless the surety assents to such contract.

Sections 136—140.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Surety not discharged when agreement made with third person to give time to principal debtor.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

Release of one co-surety does not discharge others.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

Illustrations.

(a) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(b) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(c) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty

Rights of surety on payment or performance.

Sections 141—143.

has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Surety's right
to benefit of
creditor's
securities.

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not and, if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

(a) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(c) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

Guarantee
obtained by
misrepresenta-
tion invalid.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee
obtained by
concealment
invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance is invalid.

Illustrations.

(a) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

Sections 144-146.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Guarantee on contract that creditor shall not act on it until co-surety joins.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Implied promise to indemnify surety.

Illustrations.

(a) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Co-sureties liable to contribute equally.

Illustrations.

(a) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

(b) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

Sections 147—150.

Liability of
co-sureties
bound in dif-
ferent sums.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(a) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(b) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

CHAPTER IX.

OF BAILMENT.

"Bailment,"
"bailor," and
"bailee" and
defined.

148. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee."

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

Delivery to
bailee how
made.

149. The delivery to the bailee may be made by doing any things which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Bailor's duty
to disclose
faults in
goods bailed.

150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make such

Sections 151—154.

disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it and A is injured. B is responsible to A for the injury.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances take of his own goods of the same bulk, quality and value as the goods bailed.

Care to be taken by bailee.

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Bailee when not liable for loss, etc., of thing bailed.

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Termination of bailment by bailee's act inconsistent with conditions.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Liability of bailee making unauthorized use of goods bailed.

Illustrations.

(a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

Sections 155—159.

Effect of mixture, with bailor's consent, of his goods with bailee's.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, without bailor's consent, when the goods can be separated.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Illustration

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidentally damage.

Effect of mixture, without bailor's consent, when the goods cannot be separated.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Illustration.

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

Repayment of bailor of necessary expenses.

158. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Restoration of goods lent gratuitously.

159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Sections 160—168.

160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Return of goods bailed on expiration of time or accomplishment of purpose.

161. If, by the fault of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss destruction or deterioration of the goods from that time.

Bailee's responsibility when goods are not duly returned.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Termination of gratuitous bailment by death.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Bailor entitled to increase or profit from goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

Bailor's responsibility to bailee.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailment by several joint owners.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Bailee not responsible on re-delivery to bailor with out title.

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of third person claiming goods bailed.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

Right of finder of goods; may sue for specific reward offered.

Sections 169—174.

When finder
of thing com-
monly on sale
may sell it.

169. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it :—

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

Bailee's parti-
cular lien.

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

(a) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(b) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three month's credit for the price. B is not entitled to retain the coat until he is paid.

General lien
of bankers,
factors, whar-
fingers, attor-
neys and
policybrokers

171. Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them ; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

Bailments of Pledges.

"Pledge,"
"pawnor,"
and
"pawnee"
defined.

172. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge." The bailor is in this case called the "pawnor." The bailee is called the "pawnee."

Pawnee's
right of
retainer.

173. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee not
to retain for
debt or pro-
mise other
than that for
which goods
pledged.

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged ; but such contract, in the absence of anything to the contrary,

Sections 175—179.

shall be presumed in regard to subsequent advances made by the pawnee.

Presumption in case of subsequent advances.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right as to extraordinary expenses incurred.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

Pawnee's right where pawnor makes default.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Defaulting pawnor's right to redeem.

178. A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, warfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents: Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly;

Pledge by possessor of goods, or of documentary title to goods.

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.

179. Where a person pledged goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Pledge where pawnor has only a limited interest.

*Sections 180-187.**Suits by Bailees or Bailors against Wrong-doers.*

Suit by bailor,
or bailee
against
wrong-doer.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportion-
ment of relief
or compen-
sation
obtained by
such suits.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X.

AGENCY.

Appointment and Authority of Agents.

"Agent" and
"principal"
defined.

182. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal."

Who may
employ agent.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be
an agent.

184. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Considera-
tion not ne-
cessary.

185. No consideration is necessary to create an agency.

Agent's
authority
may be ex-
pressed or
implied.

186. The authority of an agent may be expressed or implied.

Definitions of
express and
implied
authority.

187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from circumstances of the case; and things spoken or written; or the ordinary course of dealing, may be accounted circumstances of the case.

*Sections 188—191.**Illustrations.*

A owns a shop in Serampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

188. An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act. Extent of agent's authority.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(a) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances. Agent's authority in an emergency.

Illustrations.

(a) An agent for sale may have goods repaired if it be necessary.

(b) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

Sub-Agents.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed. When agent cannot delegate.

191. A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency. "Sub-agent" defined.

Sections 192—195.

Representa-
tion of princi-
pal by sub-
agent properly
appointed.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agent's re-
sponsibility
for sub-agent.

The agent is responsible to the principal for the acts of the sub-agent :

Sub-agent's
responsibility.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.

Agent's re-
sponsibility
for sub-agent
appointed
without
authority.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons ; the principal is not represented by, or responsible for, the acts of the person so employed, nor is that person responsible to the principal.

Relation
between
principal and
person duly
appointed by
agent to act
in business
of agency.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

(a) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co., for the recovery of the money. D is not a sub-agent, but is solicitor for A.

Agent's duty
in naming
such person .

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case ; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(a) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

Sections 196—200.

(b) A consigns goods to B, a merchant for, sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority. Effect of ratification.

197. Ratification may be expressed or may be implied in the conduct of the person or whose behalf the acts are done.

Ratification may be expressed or implied.

Illustrations.

(a) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(b) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Knowledge requisite to valid ratification.

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Effect of ratifying unauthorized act forming part of a transaction.

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Ratification of unauthorized act cannot injure third person.

Illustrations.

(a) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

*Sections 201—205.**Revocation of Authority.*

Termination
of agency.

201. An agency is terminated by the principal revoking his authority ; or by the agent renouncing the business of the agency ; or by the business of the agency being completed ; or by either the principal or agent dying or becoming of unsound mind ; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination
of agency,
where agent
has an
interest in
subject-
matter.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations.

(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

When prin-
cipal may
revoke
agent's
authority.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation
where
authority has
been partly
exercised.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(a) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

Compensa-
tion for re-
vocation by
principal or
renunciation
by agent.

205. Where there is an express or implied contract, that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous

Sections 205—210.

revocation or renunciation of the agency without sufficient cause.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Notice of revocation or renunciation.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Revocation and renunciation may be expressed or implied by agent

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

When termination of agent's authority takes effect as to agent, and as to third persons.

Illustrations.

(a) A directs B to sell goods for him, and agrees to give B five per cent commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A and B is entitled to five rupees as his commission.

(b) A, at Madras, by letter directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Agent's duty on termination of agency by principal's death or insanity.

210. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Termination of sub-agent's authority.

*Sections 211-212.**Agents' Duty to Principal.*

Agents duty
in conduct-
ing princi-
pal's business

211. An agent is bound to conduct the business of his principal according to the directions given by the principal, or in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

(a) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(b) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

Skill and deli-
gence re-
quired from
agent.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

Illustrations.

(a) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, e.g., by variation of rate of exchange—but not further.

(b) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c) A, an insurance-broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

Sections 213-216.

(d) A, a merchant in England, directs B, his agent at Bombay who accepts the agency, to send him 100 bales of cotton by a certain ship B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

213. An agent is bound to render proper accounts to his principal on demand. Agent's accounts.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions. Agent's duty to communicate with principle,

215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him. Right of principal when agent deals, on his own account, in business of agency without principal's consent.

Illustrations.

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction. Principal's right to benefit gained by agent dealing on his own account in business of agency.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Sections 217-222.

Agent's right
of retainer
out of sums
received on
principal's
account.

217. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's duty
to pay sums
received for
principal.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

When
agent's re-
muneration
becomes due.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain, moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold or although the sale may not be actually complete.

Agent not
entitled to
remuneration
for business
misconduct-
ed.

220. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has mis-conducted.

Illustrations.

(a) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to A.

(b) A employs B to recover 1,00,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

Agent's lien
on principal's
property.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

Principal's Duty to Agent.

Agent to be
indemnified
against
consequences
of lawful acts

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Sections 223-224.

Illustrations.

(a) B, at Singapur, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(b) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Agent to be indemnified against consequences of acts done in good faith.

Illustrations.

(a) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(b) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceedings of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Non-liability of employer of agent to do a criminal act.

Illustrations.

(a) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(b) B, the proprietor of a newspaper, publishes, at A's request a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Sections 225—228.

Compensation to agent for injury caused by principal's neglect.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of agency on contracts with third persons.

Enforcement and consequences of agent's contracts.

226. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(a) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B.

(b) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

Principal how far bound when agent exceeds authority.

227. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Principal not bound when excess of agent's authority is not separable.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

Sections 229—232.

229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Consequences of notice given to agent

Illustrations.

(a) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(b) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal. Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases :—

(1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad ;

(2) where the agent does not disclose name of his principal :

(3) where the principal, though disclosed, cannot be sued.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract ; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

Rights of parties to a contract made by agent not disclosed.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Where one man makes a contract with another neither knowing nor having reasonable ground to suspect

Performance of contract with agent supposed to be principal.

Sections 233—237.

that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

Right of
person dealing
with
agent personally
liable.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

Consequence
of inducing
agent or
principal to
act on behalf
that principal
or agent
will be held
exclusively
liable.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Liability of
pretended
agent.

235. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Person
falsely con-
tracting as
agent, not
entitled to
performance.

236. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

Liability of
principal
inducing
belief that
agent's un-
authorized
acts were
authorized.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations.

(a) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters

Sections 238-239.

into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Effect on, agreement, of misrepresentation or fraud by agent.

Illustrations.

(a) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(b) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER XI.

OF PARTNERSHIP.

239. "Partnership" is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them. "Partnership" defined

Persons who have entered into partnership with one another are called collectively a "firm." "Firm" defined.

Illustrations.

(a) A and B buy 100 bales of cotton, which they agree to sell for their joint account: A and B are partners in respect of such cotton.

(b) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(c) A agrees with B, a goldsmith, to buy and furnish gold to B to be worked up by him sold, and that they shall share in the resulting profit or loss. A and B are partners.

(d) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B. A and B are not partners.

(e) A and B are joint owners of a ship. This circumstance does not make them partners.

Sections 240—247.

Lender not a partner by advancing money for share of profits.

240. A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.

Property left in business by retiring partner, or deceased partner's representative.

241. In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner, to be used in the business is to be considered a loan within the meaning of the last preceding section.

Servant or agent remunerated by share of profits not a partner.

242. No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Widow or child of deceased partner receiving annuity out of profits not a partner.

243. No person, being a widow or child of a deceased partner of a trader, and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

Person, receiving portion of profits for sale of good will not a partner.

244. No person receiving, by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reasons only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

Responsibility of person leading another to believe him a partner.

245. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm.

Liability of person permitting himself to be represented as a partner. Minor partner not personally liable, but his share is.

246. Any one consenting to allow himself to be represented as a partner is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.

247. A person who is under the age of majority according to the law to which he is subject may be admitted to the benefits of partnership, but cannot be made personally liable to any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

Sections 248—251.

248. A person who has been admitted to the benefits of partnership under the age of majority becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

Liability of minor partner on attaining majority.

249. Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

Partner's liability for debts of partnership.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

Partner's liability to third person for neglect or fraud of co-partner.

251. Each partner who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Partner's power to bind co-partners.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(a) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(b) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(c) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(d) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

Sections 252-253.

Annulment
of contract
defining,
partners'
rights and
obligations.

252. Where partners have by contract regulating and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all of them, which consent must either be expressed, or be implied from a uniform course of dealing.

Illustration.

A, B and C, intending to enter into partnership, executed written articles of agreement, by which it is stipulated that the net profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A receiving one-half of the nett profits and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

Rules deter-
mining
partner's
mutual
relations,
where no
contract to
contrary.

253. In the absence of any contract to the contrary, the relations of partners to each other are determined by the following rules:—

(1) all partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss:

(2) all partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership:

(3) each partner has a right to take part in the management of the partnership business:

(4) each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business:

(5) when differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners:

(6) no person can introduce a new partner into a firm without the consent of all the partners:

(7) if, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members:

(8) unless partnership has been entered into for a fixed term, any partner may retire from it at any time:

Sections 254—258.

(9). where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court :

(10) partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

254. At the suit of a partner the Court may dissolve the partnership in the following cases :—

When Court may dissolve partnership

(1) when a partner becomes of unsound mind :

(2) when a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors :

(3) when a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person :

(4) when any partner becomes incapable of performing his part of the partnership contract :

(5) when a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners :

(6) when the business of the partnership can only be carried on at a loss.

255. A partnership is in all cases dissolved by its business being prohibited by law.

Dissolution of partnership by prohibition of business Rights and obligations of partner in partnership continued after expiry of term for which was entered into.

256. If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner :

257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

General duties of partners.

258. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Account of firm of benefit derived from transaction affecting partnership

Illustrations.

(a) A, B and C are partners in trade, C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the

Sections 259—265.

partnership business is carried on. A and B are entitled to participate if they please, in the benefit of the lease.

(b) A, B and C carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

Obligations,
to firm, of
partner
carrying on
competing
business.

259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

Revocation
of continuing
guarantee by
change in
firm.

260. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.

Non-liability
of deceased
partner's
estate for
subsequent
obligations.

261. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

Payment of
partnership
debts, and of
separate
debts.

262. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner must be applied in payment of his separate debts or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Continuance
of partners'
rights and
obligations
after dissolution.

263. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.

Notice of
dissolution.

264. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

Winding up
by Court on
dissolution or
after termination.

[a] **265.** Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of a contract to the contrary, wind up the business of the partnership, provide for the

Section 266.

payment of its debts and distribute the surplus according to the shares of the partners respectively.

266. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.

Limited liability partnerships, incorporated partnerships and joint-stock companies.

SCHEDULE.

ENACTMENTS REPEALED.

Statutes.

Number and year of Statute	Title	Extent of repeal
Stat. 29 Car. II, cap. 3	An Act for prevention of Frauds and Perjuries.	Sections 1, 2, 3, 4 and 17.
Stat. 11 and 12 Vict., cap. 21.	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.
Act XIII of 1840 ..	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 4 Geo. IV, chap. 83, as altered and amended by the Statute 6 Geo. IV, chap. 94.	The whole.
Act XIV of 1840 ..	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 9 Geo. IV, chap. 14.	The whole.
Act XX of 1844 ..	An Act to amend the law relating to Advances <i>bona fide</i> made to Agents interested with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 5 and 6 Victoria, c. 39, as altered by this Act.	The whole.
Act XXI of 1848 ..	An Act for avoiding Wagers ..	The whole.
Act V of 1860 ..	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Sections 9 and 10.
Act XV of 1866 ..	An Act to amend the law of Partnership in India.	The whole.
Act VIII of 1867 ..	An Act to amend the law relating to Horse racing in India.	The whole.

ACT No. XV OF 1872.

Notification by the Government of India, Foreign Department, Judicial No. 176, dated Fort William, the 31st December 1875.

The Governor-General in Council is pleased to direct that "The Indian Christian Marriage Act, 1872," with the exception of the portions thereof specified in the Schedule hereto annexed, shall, on and from the first day of January 1876, be in force throughout the Territories of Mysore, so far as regards marriages between persons one of whom is a Native Christian subject of Mysore, and neither of whom is a Christian British subject.

2. The expression "Local Government," wherever it occurs in the said Act, shall be deemed to mean the Chief Commissioner of Mysore.*

SCHEDULE.

Section 1.

Section 8.

Section 9, the words "or (so far as regards any Native State) the Governor-General in Council."

Sections 28 to 36, inclusive.

Section 43.

Sections 45 and 46, those expressions which refer to the Jurisdiction of a Judge of the High Court.

Section 47.

Section 48, the last three clauses and such expressions as relate to the jurisdiction of a Judge of the High Court.

Sections 54 to 56, inclusive.

Section 84.

Section 86.

* This is virtually superseded by Notification of the Government of Mysore No 153, dated the 2nd September 1881, according to which the expression "Local Government" is to denote "The Government of His Highness the Maharaja of Mysore".

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ACT No. XV OF 1872.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL
ON THE 18TH JULY 1872.)

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion; it is hereby enacted as follows :— Preamble.

PRELIMINARY.

1. [*Short title and extent.*] *Omitted as directed by Notification No. 176 J., dated the 31st December 1875.*

2. The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment. Enactments repealed.

And all appointments made, licences granted, consents given, certificates issued, and other things duly done under any such enactment shall be deemed to be respectively made, granted, given, issued and done under this Act.

For clause XXIV of section 19 of the Court-fees Act, 1870, the following shall be substituted :—

“XXIV, Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48.”

3. In this Act, unless there is something repugnant in the subject or context,— Interpretation-clause.

“Church of England” and “Anglican” mean and apply to the Church of England as by law established;

“Church of Scotland” means the Church of Scotland as by law established.

“Church of Rome” and “Roman Catholic” mean and apply to the Church which regards the Pope of Rome as its spiritual head;

“Church” includes any chapel or other building generally used for public Christian worship;

“Minor” means a person who has not completed the age of twenty-one years, and who is not a widower or a widow;

“Native State” means the territories of any Native Prince or State in alliance with Her Majesty;

Sections 4—7.

The expression “ Christians ” means persons professing the Christian religion ;

• And the expression “ Native Christians ” includes the Christian descendants of Natives of India converted to Christianity, as well as such converts.

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

Marriages to be solemnized according to Act.

4. Every marriage between persons, one or both of whom is a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section ; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

5. Marriages may be solemnized in India—

Persons by whom marriages may be solemnized.

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister ;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland ;

(3) by any Minister of Religion licensed under this Act to solemnize marriages ;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act ;

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

Grant and revocation of licenses to solemnize marriages.
Marriage Registrars.

6. The Local Government may grant licenses to Ministers of Religion to solemnize marriages within the territories under its administration, and may revoke such licenses.

7. The Local Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration.

Senior Marriage Registrar

Where there are more Marriage Registrars than one in any district, the Local Government shall appoint one of them to be the Senior Marriage Registrar,

Sections 8—11.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the District shall act as, and be, Marriage Registrar thereof during such absence, illness or temporary vacancy.

Magistrate
when to be
Marriage Re-
gistrar.

8. [*Marriage Registrars in Native States.*] Omitted as directed by Notification No. 176 J., dated the 31st December 1875.

9. The Local Government [a] may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians.

Licensing of
persons to
grant certifi-
cates of mar-
riage between
Native Christ-
ians.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE
SOLEMNIZED.

10. Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening :

Time for
solemnizing
marriage.

Provided that nothing in this section shall apply to :—

(1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

Exceptions.

(2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license.

11. No Clergyman of the Church of England shall solemnize a marriage in any place other than a church, unless there is no church within five miles' distance by the shortest road from such place, or

Place for
solemnizing
marriage.

[a] Certain words in Section 9 have been omitted as directed by Notification No. 176 J., dated the 31st December 1875.

Sections 12-13.

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

Fee for special license.

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION
LICENSED UNDER THIS ACT.

Notice of intended marriage.

12. Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act,

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of religion whom he or she desires to solemnize the marriage, and shall state therein—

- (a) the name and surname, and the profession or condition, of each of the persons intending marriage,
- (b) the dwelling-place of each of them,
- (c) the time during which each has dwelt there, and
- (d) the church or private dwelling in which the marriage is to be solemnized :

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

Publication of such notice

13. If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

Return or transfer of notice.

But if he is not entitled to officiate as a Minister in such church, he shall, at his opinion, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

Sections 14—18.

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the District, who shall affix the same to some conspicuous place in his own office.

Notice of intended marriage in private dwelling.

15. When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the District, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

Sending copy of notice to Marriage Registrar when one party is a minor.

16. The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

Procedure on receipt of notice.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made ;

Issue of certificate of notice given and declaration made.

Provided :—

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister ;

Proviso.

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue ; and

(3) that the issue of such certificate has not been forbidden, in manner hereafter mentioned, by any person authorized in that behalf :

18. The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration :—

Declaration before issue of certificate

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance to the said marriage,

Sections 19—23.

and when either or both of the parties is or are a minor or minors,

- (b) that the consent or consents required by law has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

Consent of father, or guardian or mother.

19. The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

- and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

Power to prohibit by notice issue of certificate.

20. Every person whose consent to a marriage is required under section 19 is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

Procedure on receipt of notice.

21. If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition, or until the said notice is withdrawn by the person who gave it.

Issue of certificate in case of minority.

22. When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19, has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

Issue of certificate to Native Christians.

23. When any Native Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the

Sections 24—37.

notice or certificate to such Native Christian into some language which he understands.

24. The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect. Form of certificate

25. After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt : Solemnization of marriage.

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

26. Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void, Certificate void if marriage not solemnized within two months.

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS
OF RELIGION.

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act, shall be registered in manner herein after prescribed. Marriages when to be registered.

28 to 36. [*Registration of Marriages of persons not being Native Christians.*] Omitted as directed by Notification No. 176 J., dated the 31st December 1875.

37. When any marriage between Native Christians is solemnized under Part I or Part III of this Act, the person solemnizing the same shall [a] register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district. Registration of marriages between Native Christians under Part I or II. Custody and disposal of register book

[a] The words "instead of proceeding in the manner provided by sections 28 to 36 both inclusive," have been omitted, as a consequence of the omission of sections 28 to 36, *supra*.

Sections 38—40.

Whoever has the control of the book at the time when it is filled shall send it to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the Secretary to the Local Government to be kept by him with the records of his office.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF,
A MARRIAGE REGISTRAR.

Notice of intended marriage before Marriage Registrar.

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt ;

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized :

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

Publication of notice.

39. Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his own office.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

Notice to be filed and copy entered in Marriage Notice Book.

40. The Marriage Registrar shall file all such notices and keep them with the records of his office,

Sections 41—43.

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Local Government, and to be called the "Marriage Notice Book";

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

41. If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made :

Certificate of Notice given and oath made.

Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue ;

Proviso.

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act ;

that four days after the receipt of the notice have expired, and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor fourteen days after the entry of such notice have expired.

42. The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath—

Oath before issue of certificate.

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hinderance, to the said marriage, and

(b) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his or her usual place of abode within the district of such Marriage Registrar, and, where either or each of the parties is a minor,

(c) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in India authorized to give such consent, as the case may be.

43. [*Petition to High Court to order certificate in less than fourteen days.*] Omitted as directed by Notification No. 176 J., dated the 31st December 1875.

Sections 44—46.

Consent of
father or
guardian.

44. The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor ;

Protest
against issue
of certificate.

and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized.

Effect of
protest.

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it.

Petition
where person
whose con-
sent is neces-
sary is in-
sane, or un-
justly with-
holds consent.

45. If any person whose consent is necessary to any marriage under this Part is of unsound mind,
or if any such person (other than the father) without just cause withholds his consent to the marriage,
the parties intending marriage may apply by petition[a] to the District Judge :

Procedure
on petition.

And the said [b] District Judge [c] may examine the allegations of the petition in a summary way :

And, if upon examination such marriage appears proper, such [b] District Judge [c] shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage ;

and, if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden.

Petition
when
Marriage
Registrar
refuses
certificate
Procedure on
petition.

46. Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition [d] to the District Judge.

[a], [b], [c], [d] Those expressions in Sections 45 and 46 which refer to the jurisdiction of a Judge of the High Court have been omitted as directed by Notification No. 176 J., dated the 31st December 1875.

Sections 47—49.

The said [b] District Judge [c] may examine the allegations of the petition in a summary way, and shall decide thereon.

The decision of such [c] District Judge shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

47. [*Petition when Marriage Registrar in Native State refuses certificate.*] Omitted as directed by Notification No. 176 J., dated the 31st December 1875.

48. Whenever a Marriage Registrar, acting under the provisions of section 44, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition [a] to the District Judge.

Petition when Registrar doubts authority of person forbidding.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same,

Procedure on petition.

and the said [b] District Judge [c] shall examine into the allegations of the petition and the circumstances of the case ;

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such [b] District Judge [c] shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden. (d)

49. Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriage Registrar, under section 44, or [e] the District Judge, under sections 45 or 46, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered.

Liability for frivolous protest against issue of certificate.

[a], [b], [c], [d] Such expressions in Section 18 as relate to the jurisdiction of a Judge of the High Court, and the last three clauses of the section, have been omitted as directed by Notification No. 176 J. dated the 31st December 1875,

[e] The words " or a Judge of the High Court " in Section 49 have been omitted in consequence of the omission from previous Sections of all expressions relating to the jurisdiction of a Judge of the High Court.

Sections 50—53.

Form of certificate.

50. The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the second schedule to this Act annexed or to the like effect,

and the Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

Solemnization of marriage after issue of certificate.

51. After the issue of the certificate of the Marriage Registrar,

or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts,

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificates, or certification, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect :—

“ I do solemnly declare that I know not of any lawful impediment why I, *A. B.*, may not be joined in matrimony to *C. D.*”

And each of the parties shall say to the other as follows, or to the like effect :—“ I call upon these persons here present to witness that, I *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [*or husband*].”

When marriage not had within two months after notice, new notice required.

52. Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 40, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void ;

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

Marriage Registrar may ask for particulars to be registered.

53. A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

Sections 55--60.

54. [*Registration of marriages solemnized under Part V.*] Omitted as directed by Notification No. 176 J., dated the 31st December 1875.

55. [*Certificates to be sent monthly to Registrar-General and Custody of Register-book.*] Omitted as directed by Notification No. 176 J., dated the 31st December 1875.

56. [*Officers to whom Registrars in Native States shall send certificates.*] Omitted as directed by Notification No. 176 J., dated the 31st December 1875.

57. When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands ;

Registrars to ascertain that notice and certificate are understood by Native Christians.

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate.

58. When any Native Christian is married under the provisos of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, or cause to be translated, to such Native Christian into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

Native Christians to be made to understand declarations.

59. The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable), and not otherwise.

Registration of marriages between Native Christians.

PAT VI.

MARRIAGE OF NATIVE CHRISTIANS.

60. Every marriage between Native Christians applying for a certificate shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise :—

On what conditions marriages of Native Christians may be certified.

(1) the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years :

Sections 61—63.

(2) neither of the persons intending to be married shall have a wife or husband still living :

(3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

“ I call upon these persons here present to witness that I, *A. B.*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C. D.*, to be my lawful wedded wife [*or husband*] ” or words to the like effect :

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorized to give such consent.

Grant of certificate.

61. When, in respect to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and, on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

Register-book to be kept.

62. A register-book of all marriages of which certificates are granted under section 61 shall be kept by the person granting such certificates in his own vernacular language.

Such register-book shall be kept according to such form as the Local Government from time to time prescribes in this behalf, and true extracts therefrom duly authenticated, shall be deposited at such places as the Local Government directs.

Searches in register-book and copies of entries.

63. Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section 62, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of an entry therein.

Sections 64—68.

64. The provisions of sections 62 and 63, as to the form of the register-book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section 37.

Books in which marriages of Native Christians under Part I or Part III are registered

65. This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics. But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V of Act No. XXV of 1864, previous to the twenty-third day of February, 1865.

Part VI not to apply to Roman Catholics. Saving of certain marriages.

PART VII.

PENALTIES.

66. Whoever for the purpose of procuring any marriage, intentionally makes any false oath or signs any false notice or certificate required by this Act, shall be deemed guilty of the offence described in section 193 of the Indian Penal Code.

False oath, declaration, notice or certificate for procuring marriage.

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code.

Forbidding by false personation, issue of certificate by Marriage Registrar.

68. Whoever, not being authorized under this Act solemnize a marriage in the absence of a Marriage Registrar of the district in which such marriage as solemnized, knowingly solemnizes a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years,

Solemnizing marriage without due authority.

or, if the offender be an European or American, with penal servitude according to the provisions of Act XXIV of 1855 (to substitute penal servitude for the punishment of

Sections 69—71.

transportation in respect of European and American convicts and to amend the law relating to the removal of such convicts),
 • and shall also be liable to fine.

Solemnizing
marriage out
of proper
time, or
without wit-
nesses.

69. Whoever knowingly and wilfully solemnizes a marriage between persons, one or both of whom is or are a Christian or Christians at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Saving of
marriages
solemnized
under special
license.

This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, not to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10.

Solemnizing
without
notice or
within four-
teen days
after notice,
marriage
with minor.

70. Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Issuing certi-
ficate, or
marrying,
without pub-
lication of
notice.

71. A Marriage Registrar under this Act, who commits any of the following offences:—

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act;

Marrying
after expiry
of certificate.

(2) after the expiration of two months from the issue by him of a certificate in respect of any marriage, solemnizes such marriage;

Solemnizing
marriage
with minor
within four-
teen days,
without
authority of
Court, or
without
sending copy
of notice

(3) solemnizes, without an order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the District if there be more Marriage Registrars of the District than one, and if he himself be not the Senior Marriage Registrar;

Sections 72-73.

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof,

Issuing certificate against authorised prohibition.

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

72. Any marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of three months after the notice has been entered by him as aforesaid,

Issuing certificate after expiry of notice, or, in case of minor within fourteen days after notice, or against authorized prohibition.

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 166 of the Indian Penal Code.

73. Whoever, being authorized under this Act to solemnize a marriage,

Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome).

and not being a Clergyman of the Church of England solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of that church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that church,

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him ;

Issuing certificate, or marrying, without publishing notice, or after expiry of certificate.

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar,

Issuing certificate for, or solemnizing marriage with minor, within fourteen days after notice.

Sections 74—77.

or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the District ;

Issuing
certificate
authorizedly
forbidden ;

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue ;

solemnizing
marriage
authorizedly
forbidden.

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same ;

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

Unlicensed
person grant-
ing certificate
pretending to
be licensed.

74. Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Destroying or
falsifying
register-
books.

75. Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register, book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Limitation of
prosecutions
under Act.

76. The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

PART VIII.

MISCELLANEOUS.

What matters
need not be
proved in
respect of
marriage in
accordance
with Act.

77. Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely :—

(1) any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law :

(2) the notice of the marriage :

(3) the certificate or translation thereof :

(4) the time and place at which the marriage has been solemnized :

Sections 78—81.

(5) the registration of the marriage.

78. Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

Correction of errors.

And every entry made under this section shall be, attested by the witnesses in whose presence it was made.

And, in case such certificate has been already sent to the Secretary to the Local Government, such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

79. Every person solemnizing a marriage under this Act, and hereby required to register the same,

Searches and copies of entries.

and every Marriage Registrar or Secretary to the Local Government having the custody for the time being of any register of marriages, or of any certificate, or duplicate or copies of certificate, under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate or copies, and give a copy under his hand of any entry in the same.

80. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register, or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate or duplicate, or of any entry therein, respectively, or of such copy.

Certified copy of entry in marriage-register, etc., to be evidence.

81. The Secretary to the Local Government and the officers appointed under section 56 shall, at the end of every quarter in each year, select, from the certificates of marriages forwarded to them respectively during such quarter, the

Sending certificates of certain marriages to Secretary of State for India.

Sections 82—87.

certificates of the marriages of which the Governor General in Council may desire that evidence shall be transmitted to England,

and shall send the same certificates, signed by them respectively, to the Secretary to the Government of India in the Home Department, for the purpose of being forwarded to the Secretary of State for India and delivered to the Registrar General of Births, Deaths and Marriages :

Provided that, in the case of the Governments of Madras and Bombay, the said certificates shall be forwarded by such Governments respectively directly to the Secretary of State for India.

Local Gov-
ernment to
prescribe fees.

82. Fees shall be chargeable under this Act for—
receiving and publishing notice of marriages ;
issuing certificates of marriages by Marriage Registrars, and registering marriages by the same ;
entering protests against, or prohibitions of, the issue of marriage certificates by the said Registrars ;
searching register-books or certificates, or duplicates or copies thereof ;
giving copies of entries in the same under Sections 63 and 79,

The Local Government shall fix the amount of such fees respectively,

and may from time to time vary or remit them either generally or in special cases, as to it may seem fit.

Power to
make rules.

83. The Local Government may make rules in regard to the disposal of the fees mentioned in section 82, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act.

84. [*Power to prescribe fees and rules for Native States.*] Omitted as directed by Notification No. 176 J., dated the 31st December 1875.

Power to de-
clare who
shall be Dis-
trict Judge.

85. The Local Government may, by notification in the official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge,

86. [*Power to delegate functions under this Act of Governor General in Council.*] Omitted as directed by Notification No. 176 J., dated the 31st December 1875.

Saving of
Consular
marriages.

87. Nothing in this Act applies to any marriage performed by any Minister, Consul or Consular Agent between

Section 88.

subjects of the State which he represents and according to the laws of such State.

88. Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

Non-validation of marriages within prohibited degrees.

(Schedule I.—Notice of Marriage.)

SCHEDULE I.

(See sections 12 and 38.)

NOTICE OF MARRIAGE.

To a Minister [or Registrar] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):

Names	Condition	Rank or profession	Age	Dwelling place	Length of residence	Church, chapel or District in which the place of worship in which the marriage is to be solemnized	District in which the other party resides, when the parties dwell in different districts.
<i>Martha Green.</i>	<i>Widower.</i>	<i>Carpenter</i>	<i>Of full age</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Spinster.</i>		<i>....</i>	<i>Minor.</i>	<i>20, Hastings Street.</i>	<i>More than a month.</i>		

Witness my hand, this day of seventy-two.

(Sd.) JAMES SMITH.

[The *italics* in this schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

Schedule II.—Certificate of Receipt of Notice.

SCHEDULE II.

(See sections 24 and 50.)

CERTIFICATE OF RECEIPT OF NOTICE.

I,
do hereby certify that, on the day of , notice
was duly entered in my Marriage Notice Book of the marriage
intended between the parties therein named and described,
delivered under the hand of
one of the parties, (that is to say) :—

Names	Condition	Rank or profession	Age	Dwelling place	Length of residence	Church, chapel or place of worship in which the marriage is to be solemnized	District in which the other party resides, when the parties dwell in different districts
<i>James Smith.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>Of full age.</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Martha Green.</i>	<i>Spinster.</i>	<i>....</i>	<i>Minor.</i>	<i>20, Hastings Street.</i>	<i>More than a month.</i>		

and that the declaration required by section 17 [or 41] of the Indian Christian Marriage Act, 1872, has been duly made by the said (*James Smith*).

Date of notice entered

Date of certificate given

The issue of this certificate
has not been prohibited
by any person authorized
to forbid the issue
thereof.

Witness my hand, this

day of *seventy-two*
(Signed)

Schedule V.—Enactments repealed.

This certificate will be void, unless the Marriage is solemnized on or before the day of

[The *italics* in the schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE III.

[*Form of Register of Marriages.*]

Omitted as a consequence of the omission of sections 28 and 31.

SCHEDULE IV.

[*Marriage Register Book.*]

Omitted, as a consequence of the omission of sections 32 and 54.

SCHEDULE V.

(*See section 2*)

ENACTMENTS REPEALED.

Number and year	Title	Extent of repeal
Statute 58 Geo. 3, cap. 84.	An Act to remove Doubts as to the Validity of certain marriages had and solemnized within the British territories in India.	The whole.
Statute 14 and 15 Vic., cap. 40.	An Act for Marriages in India ..	The whole.
Act No. V of 1852 ..	An Act for giving effect to the provisions of an Act of Parliament, passed in the 15th year of the reign of Her present Majesty, entitled "An Act for Marriages in India."	So much as has not been repealed.
Act No. V of 1865 ..	The Indian Marriage Act, 1865 ..	The whole Act, except so far as it relates to the Straits Settlements.
Act No. XXII of 1866	An Act to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts and the cantonments of Secunderabad, Trimungeery and Aurungabad.	The whole.

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ACT No. V OF 1873.

Notification by the Government of India, Foreign Department, Judicial, No. 118, dated Simla, the 22nd June 1873.

His Excellency the Viceroy and Governor-General in Council is pleased to apply the provisions of Act V of 1873^{*} (The Government Savings Banks Act, 1873) to the Province of Mysore.

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5. Payment to be a discharge.
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Sections 1—5.

ACT No. V OF 1873.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL
ON THE 28TH JANUARY 1873.)

An Act to amend the law relating to Government Savings Banks.

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks; It is hereby enacted as follows :—

Preliminary.

1. This Act may be called “ The Government Savings Banks Act, 1873 ” :—

It extends to the whole of British India ;

And it shall come into force on the passing thereof.

Local extent.

• Commence-
ment

2. Act No. XXVI of 1855 (*to facilitate the payment of small deposits in Government Savings Banks to the representatives of deceased depositors*) is hereby repealed.

Repeal of Act
XXVI of
1855.

3. In this Act—

“ Depositor ” means a person by whom, or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank ; and “ deposit ” means money so deposited :

Interpreta-
tion clause.
“ Depositor ”

“ Deposit.”

“ Secretary ” includes every person empowered to manage a Government Savings Bank :

“ Secretary.”

and “ Minor ” means a person who has not completed the age of eighteen years.

“ Minor.”

Deposits belonging to the Estates of Deceased Persons.

4. If a depositor dies, leaving in a Government Savings Bank a sum of money not exceeding one thousand rupees,

Payment on
death of depo-
sitor.

and if probate of his will or letters of administration of his estate, or a certificate granted under Act No. XXVII of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), is not produced to the Secretary of such Bank within three months of the death of the said depositor,

the Secretary of such Bank may pay the said sum of money to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased.

5. Such payment shall be a full discharge from all further liability in respect of the money so paid :

Payment to
be a discharge

Sections 6—8.

Saving of
right of ex-
ecutor.

But nothing herein contained precludes any executor or administrator, or other representative of the deceased, from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Saving of
right of credi-
tor.

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act, or the said Act No. XXVI, of 1855, to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased.

Security for
due adminis-
tration.

6. The Secretary of any such Bank may take such security as he thinks necessary from any person to whom he pays any money under section 4 for the due administration of the money so paid,

and he may assign the said security to any person interested in such administration.

Power to ad-
minister oath.

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank may take evidence on oath or affirmation according to the law for the time being relating to oaths and affirmations.

Penalty for
false state-
ments.

Any person who, upon such oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of an offence under section 193 of the Indian Penal Code.

Deposit when
excluded in
computing
court-fees.

8. Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed one thousand rupees, such amount shall be excluded in computing the fee chargeable, under the Court-fees Act, 1870, on the probate, or letters of administration, or certificate (if any) granted in respect of his property :

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorized to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank, and the Court shall receive it as evidence of the said amount.

Sections 9—13.

9. Nothing hereinbefore contained applies to money belonging to the estate of any European officer, non-commissioned officer, or soldier dying in Her Majesty's service in India, or of any European who, at the time of his death, was a deserter from the said service.

Act not to apply to deposits belonging to estates of European soldiers or deserters.

Deposits belonging to Minors.

10. Any deposit made by, or on behalf of, any minor, may be paid to him personally, if he made the deposit, or to his guardian for his use, if the deposit was made by any person other than the minor, together with the interest accrued thereon.

Payment of deposits to minor or guardian.

The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge therefor.

11. All payments of deposits heretofore made to minors or their guardians by any Secretary of a Government Savings Bank shall be deemed to have been made in accordance with law.

Legalization of like payments heretofore made.

Deposits belonging to Lunatics.

12. If any depositor becomes insane or otherwise incapable of managing his affairs,

Payment of deposits belonging to lunatics.

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be,

such Secretary, may from time to time, make payments out of the deposit to any proper person.

and the receipt of such person, for money paid under this section, shall be a sufficient discharge therefor.

Where a Committee or Manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such Committee or Manager.

Deposits made by Married Women.

13. Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act, 1865, section 4 applies to her marriage; and her receipt for money paid to her under this section shall be a sufficient discharge therefor,

Payment of married women's deposits.

*Section 14.**Rules.*

Rules regulat-
ing certifi-
cates under
section 8, and
payments un-
der section
10, 12 or 13.

14. All certificates under section 8, and all payments under section 10, section 12 or section 13, shall be respectively granted and made by the Secretary of the Bank, subject to such rules consistent with this Act as the Governor-General in Council may, from time to time prescribe.

ACT No. X OF 1873.

*Notification by the Government of India, Foreign
Department, Judicial, No. 67, dated Simla, the 19th June 1876.*

The Governor-General in Council is pleased to declare that the Indian Oaths Act (Act X of 1873) applies to the Province of Mysore, subject to the following modification, (that is to say) in section 7 for the words "High Court" the words "Judicial Commissioner of Mysore" shall be substituted.*

* As to this, however, see Notification of the Dewan of Mysore No 24, dated the 28th April 1881, which directs the substitution of "Chief Judge" and "Chief Court" for "Judicial Commissioner" and "Court of the Judicial Commissioner" respectively in all Notifications and Rules having the force of law in Mysore

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SCHEDULE.—[*Repealed.*]

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Sections 1—4.

ACT No. X OF 1873.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL
ON THE 8TH APRIL 1873.)

*An Act to consolidate the law relating to Judicial Oaths,
and for other purposes.*

WHEREAS it is expedient to consolidate the law relating Preamble.
to judicial oaths, affirmations and declarations, and to repeal
the law relating to official oaths, affirmations and declara-
tions ; It is hereby enacted as follows :—

I.—*Preliminary.*

1. This Act may be called “ The Indian Oaths Act, Short title.
1873.”

It extends to the whole of British India, and, so far Local extent.
as regards subjects of Her Majesty, to the territories of Native
Princes and States in alliance with Her Majesty.

[Commencement.] *Repealed by Act XII of 1876 before
the present Act was extended to Mysore.*

2. [Repeal of enactments.] *Repealed by Act XII of
1876 before the present Act was extended to Mysore.*

3. Nothing herein contained applies to proceedings Saving of
certain oaths
and affirma-
tions.
before Courts Martial, or to oaths, affirmations or declara-
tions prescribed by any law which, under the provisions of
the Indian Councils Act. 1861, the Governor-General in
Council has not power to repeal.

II.—*Authority to administer Oaths and Affirmations.*

4. The following Courts and persons are authorized Authority to
administer
oaths and
affirmations.
to administer, by themselves or by an officer empowered
by them in this behalf, oaths and affirmations in discharge
of the duties or in exercise of the powers imposed or conferred
upon them respectively by law :—

(a) all Courts and persons having by law or consent
of parties authority to receive evidence ;

(b) the Commanding Officer of any military station
occupied by troops in the service of Her Majesty :

Provided :—

(1) that the oath or affirmation be administered
within the limits of the station, and

(2) that the oath or affirmation be such as a Justice
of the Peace is competent to administer in British India.

Sections 5—8.

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or
affirmations
to be made
by—
witnesses ;

5. Oaths or affirmations shall be made by the following persons :—

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence ;

interpreters ;

(b) interpreters of questions put to, and evidence given by, witnesses ; and

jurors.

(c) jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceedings, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation
by Natives
or by persons
objecting to
oaths.

6. Where the witness, interpreter or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

Forms of
oaths and
affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.

And, until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

Explanation.—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

Power of
Court to
tender
certain oaths

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding

Sections 9—14.

anything hereinbefore contained, tender such oath or affirmation to him.

9. If any party to any judicial proceedings offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceedings, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation :

Court may ask party or witness whether he will make oath proposed by opposite party.

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Administration of oath if accepted.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

Evidence conclusive as against person offering to be bound. Procedure in case of refusal to make oath.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—Miscellaneous.

13. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

Proceedings and evidence not invalidated by omission of oath or irregularity.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.

Persons giving evidence bound to state the truth.

Sections 15-16.

Amendment
of Penal Code
sections 178
and 181.

15. The Indian Penal Code sections 178 and 181, shall be construed as if, after the word "oath," the words "or affirmation" were inserted.

Official oaths
abolished.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

SCHEDULE.

[Enactments repealed.]

Repealed by Act XII of 1873 before the present Act was extended to Mysore.

ACT No. I OF 1877.

*Notification by the Government of India, Foreign Department,
Judicial, No. 47 J., dated Simla, the 27th May 1878.*

The Governor-General in Council is pleased to direct that, the following Acts,* subject to the undermentioned modifications shall become law in the Territories of Mysore, from the 1st June 1878 :—

Act IX of 1872† (The Indian Contract Act), except the explanation appended to section 265. The word “Court” in this section shall be taken to mean “a Court not inferior, to the Court of the Judicial Assistant Commissioner.”

Act I of 1877 (The Specific Relief Act), except Chapter VIII.

* So much of this Notification as extended Act X of 1877 (The Code of Civil Procedure) to Mysore was cancelled by Regulation II of 1884, s. 52.

† For Act IX of 1872, *vide supra*, pp. 220-308.

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ACT No. I OF 1877.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL
ON THE 7TH FEBRUARY 1877.)

*An Act to define and amend the law relating to certain kinds
of specific Relief.*

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. This Act may be called “The Specific Relief Act, 1877.” Short title.

It extends to the whole of British India, except the Local extent
Scheduled Districts as defined in Act No. XIV of 1874.

And it shall come into force on the first day of May 1877. Commence ment.

2. On and from that day the Acts specified in the Repeal of
Schedule hereto annexed shall be repealed to the extent enactments.
mentioned in its third column.

3. In this Act, unless there be something repugnant Interpreta-
in the subject or context,— tion-clause.

‘ obligation ’ includes every duty enforceable by law :

‘ trust ’ includes every species of express, implied or
constructive fiduciary ownership :

‘ trustee ’ includes every person holding, expressly,
by implication or constructively, a fiduciary character :

Illustrations.

(a) Z bequeaths land to A, ‘ not doubting that he will pay thereout an annuity of Rupees 1,000 to B for his life.’ A accepts the bequest. A is a trustee within the meaning of this Act for B to the extent of the annuity.

(b) A is the legal, medical or spiritual adviser of B. By availing himself of his situation as such adviser, A gains sum pecuniary advantage which might otherwise have accrued to B. A is a trustee for B within the meaning of this Act of such advantage.

(c) A, being B’s banker, discloses or his own purpose the state of B’s account. A is a trustee within the meaning of this Act for B of the benefit gained by him by means of such disclosure.

(d) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee within the meaning of this Act of the renewed lease for those interested in the original lease.

Sections 4—6.

(e) A, one of several partners, is employed to purchase goods for the firm, A, unknown to his co-partners supplies them, at the market-price, with goods previously bought by himself when the price was lower and thus makes a considerable profit. A is a trustee, for his co-partners within the meaning of this Act of the profit so made.

(f) A, the manager of B's indigo factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received

(g) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(h) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

"Settlement" means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of.

Words defin-
ed in Contract
Act.

and all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

Savings.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which is not a contract;

(b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(c) to affect the operation of the Indian Registration Act, on documents.

Specific relief
how given.

5. Specific relief is given—

(a) by taking possession of certain property and delivering it to a claimant;

(b) by ordering a party to do the very act which he is under an obligation to do;

(c) by preventing a party from doing that which he is under an obligation not to do;

(d) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(e) by appointing a receiver.

Preventive
relief.

6. Specific relief granted under clause (c) of section 5 is called preventive relief.

Sections 7—10.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

Recovery of specific immovable property.

PART II.

OF SPECIFIC RELIEF.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(a) Possession of Immovable Property.

8. A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure.

Recovery of granted to enforce penal law.

9. If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit.

Suit by person dispossessed of immovable property.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(b) Possession of Movable Property.

10. A person entitled to the possession of specific movable property may recover the same in the manner prescribed by the Code of Civil Procedure.

Recovery of specific movable property

EXPLANATION 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

EXPLANATION 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Section 11.

Illustrations.

(a) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c) A receives a letter addressed to him by B. B. gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d) A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(e) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession. in any of the following cases :—

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant ;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed ;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss :

(d) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations.

of clause (a)—A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

of clause (b)—Z has got possession of an idol belonging to A's family and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause (c) —A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear ascertainable market-value. B may be compelled to deliver them to A.

Section 12.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(a) Contracts which may be specifically enforced.

12. Except as otherwise provided in this chapter, the specific performance of any contract may in the discretion of the Court be enforced—

Cases in which specific performance enforceable.

(a) when the act agreed to be done is in the performance, wholly or partly, of a trust ;

(b) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done ;

(c) when the act agreed to be done is such that, pecuniary compensation for its non-performance would not afford adequate relief ; or

(d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

EXPLANATION.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations.

of clause (a)—A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

of clause (b)—A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause (c) —A contracts with B to sell him a house for Rupees 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway company contracts with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money ; and the Court may appoint a proper person to superintend the construction of the archway road, siding and wharf.

Sections 13-14.

- A contracts to sell, and B contracts to buy, a certain number of railway shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rupees 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rupees 1,000.

of clause (d)—A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contracts of which the subject has partially ceased to exist.

- 13. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance, because a portion of its subject matter existing at its date has ceased to exist at the time of the performance.

Illustrations.

(a) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made, the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase money.

(b) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

Specific performance of part of contract where part unperformed is small.

- 14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Illustrations.

- (a) A contracts to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas, not so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighas, and to make compensation to him for not conveying the two remaining bighas; or B may be directed, at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

Sections 15—17.

(b) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Specific performance of part of contract where part unperformed is large.

Illustrations.

(a) A contracts to sell to B a piece of land consisting of 100 bighas. It turns out that 50 bighas of the land belong to A, and the other 50 bighas to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighas which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighas to him on payment of the purchase-money.

(b) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree, directing A to convey the house to him on payment of the purchase-money.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Specific performance of independent part of contract.

17. The Court shall not direct the specific performance of a part of a contract, except in cases coming under one or other of the three last preceding sections.

Bar in other cases of specific performance of part of contract.

Sections 18—19.

Purchaser's
rights against
vendor with
imperfect
title.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto the purchaser or lessee (except as otherwise provided by this chapter) has the following rights :—

(a) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest ;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence ;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee ;

(d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a fine for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

Power to
award com-
pensation in
certain cases.

19. Any person suing for the specific performance of a contract, may also ask for compensation for its breach either in addition to, or in substitution for, such performance

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

EXPLANATION.—The circumstance that the contract has become incapable of specific performance, does not preclude the Court from exercising the jurisdiction conferred by this section.

Sections 20-21.

Illustrations.

of the second paragraph—A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph—A contracts with B to sell him a house for Rupees 1,000, the price to be paid and the possession given on the 1st January 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the Explanation—A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Liquidation of damages not a bar to specific performances.

Illustration.

A contracts to grant B an under-lease of property held by A under C and that he will apply to C for a license necessary to the validity of the under-lease and that, if the license is not procured, A will pay B Rupees 10,000. A refuses to apply for the license and offers to pay B the Rupees 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license

(b) Contracts which cannot be specifically enforced.

21. The following contracts cannot be specifically enforced :—

Contracts not specifically enforceable.

(a) a contract for the non-performance of which compensation in money is an adequate relief ;

(b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its

Section 21.

nature, is such, that the Court cannot enforce specific performance of its material terms ;

(c) a contract the terms of which the Court cannot find with reasonable certainty ;

(d) a contract which is in its nature revocable ;

(e) a contract made by trustees either in excess of their powers, or in breach of their trust ;

(f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers ;

(g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date ;

(h) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the Code of Civil Procedure, no contract to refer a controversy to arbitration shall be specifically enforced ; but if any person who has made such a contract and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations.

to (a).—A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent loan of the Government of India :

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rupees 1,000 per chest :

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rupees 10,000 and to honor A's drafts to that amount.

The above contracts cannot be specifically enforced, for, in the first and the second both A and B, and in the third A, would be reimbursed by compensation in money.

to (h).—A contracts to render personal service to B :

A contracts to employ B on personal service :

A, an author, contracts with B, a publisher, to complete a literary work. B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made A instructs his valuer not to proceed.

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London :

Section 21.

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery.

A contracts with B that, in consideration of Rupees 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend :

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach .

A contracts to marry B.

The above contracts cannot be specifically enforced.

to (c)—A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to (d)—A and B contracts to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed either A or B might at once dissolve the partnership.

to (e) — A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust property worth a lakh of rupees, contract to sell it to C for Rupees 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefore. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to (f)—A company existing for the sole purpose of making and working a railway contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to (g)—A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that

Section 22.

B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to (h)--A contracts to pay an annuity to B for the lives of C and D. it turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c) Of the Discretion of the Court.

Discretion as
to decreeing
specific per-
formance.

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so: but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(a) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury, from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and ceased to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

Section 22.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plain iff.

Illustrations.

(e) A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here, the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(f) A and B, trustees, join their beneficiary, C, in a contract to sell the trust estate to D, and personally agree to exonerate the estate from heavy encumbrances to which it is subject. The purchase-money is not nearly enough to discharge those encumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the contract should be refused to B, unless he waives his claim to the unknown property.

(h) A contracts with B to sell him certain land, and to make a road to it from a certain railway station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance :—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Sections 23-24.

Illustration.

A sells land to a railway company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favor of A

(d) *For whom Contracts may be specifically enforced.*

Who may
obtain specific
performance.

23. Except as otherwise provided by this chapter, the specific performance of a contract may be obtained by—

(a) any party thereto ;

(b) the representative in interest, or the principal, of any party thereto ; provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed ;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman ;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant ;

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach ;

(g) When a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;

(h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(e) *For whom Contracts cannot be specifically enforced.*

Personal bars
to the relief

24. Specific performance of a contract cannot be enforced in favour of a person :—

(a) who could not recover compensation for its breach ;

Section 25.

(b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed ;

(c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract ; or

(d) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations.

to clause (a)—A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting not as agent for B but on his own account. A cannot enforce specific performance of this contract.

to clause (b)—A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner : he cannot enforce the contract specifically though A and B may sue each other for compensation for breach of it.

to clause (c)—A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor :—

(a) who knowing himself not to have any title to the property, has contracted to sell or let the same :

(b) who, though he entered into the contract, believing that he had a good title to the property, cannot at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt ;

(c) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Contracts to sell property by one who has no title or who is a voluntary settler.

*Sections 147—150.**Illustrations.*

- (a) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(b) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

- (c) A, being in possession of certain land, contracts to sell it to Z. On inquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(d) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to over-ride the settlement, and thus prejudice the interests of the persons claiming under it.

(f) *For whom Contracts cannot be specifically enforced,
except with a Variation.*

Non-enforce-
ment except
with varia-
tion.

26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely) :—

(a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ;

(b) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff ;

(c) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil ;

(d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce ;

(e) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Section 27.

Illustrations.

(a) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rupees 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rupees 1,000, they prove that the word 'each' was inserted by mistake; that the intention was that they should give a joint bond for Rupees 1,000. D can obtain the performance sought only with the variation thus set up.

(b) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(c) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(d) A and B enter into negotiations for the purpose of securing land to be or his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(e) A contracts in writing to let a house to B, for a certain term, at the rent of Rupees 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with B's consent, A pulls it down and erects a new house in its place: B contracting orally to pay rent at Rupees 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(g) Against whom Contracts may be specifically enforced.

27. Except as otherwise provided by this chapter, specific performance of a contract may be enforced against :—

(a) either party thereto ;
 (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract ;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant ;

(d) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;

Relief against parties and persons claiming under them by subsequent title;

Section 28.

- (e) when the promoters of a public company have; before its incorporation, entered into a contract, the company; provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Illustrations.

to clause (b).—A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rupees 5,000. A afterwards conveys the land for Rupees 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

- A contracts to sell land to B for Rupees 5,000. B takes possession of the land. Afterwards A sells it to C for Rupees 6,000. C makes no inquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts in consideration of Rupees 1,000 to bequeath certain of his lands to B. Immediately after the contract, A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his committee. B may specifically enforce the contract against C.

to clause (c).—A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

(h) Against whom Contracts cannot be specifically enforced.

28. Specific performance of the contract cannot be enforced against a party thereto in any of the following cases:—

- (a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices, of any party to whom performance would become due under the contract, or by any

What parties cannot be compelled to perform.

Sections 29—31.

promise of such party which has not been substantially fulfilled ;

(c) if his assent was given under the influence of mistake of fact, misapprehension or surprise : Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations.

to clause (c)—A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighas of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performances of the agreement.

(i) The Effect of dismissing a suit for Specific Performance.

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiffs right to sue for compensation for the breach of such contract or part, as the case may be.

Bar of suit for breach after dismissal.

(j) Awards and Directions to execute Settlements.

30. The provisions of this chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

Application of preceding sections to award and testamentary directions to execute settlements.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified ; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument, so as to express that intention, so far as this can be

When instrument may be rectified.

Sections 32—35.

done without prejudice to rights acquired by third persons, in good faith and for value.

Illustrations.

(a) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b) By a marriage-settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rupees 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

Presumption
as to intent
of parties.

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

Principles of
rectification

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the enquiry what the language of the instrument was intended to be.

Specific en-
forcement of
rectified con-
tract.

34. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

Illustration

A contracts in writing to pay his attorney, B a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

When rescis-
sion may be
adjudged.

35. Any person interested in a contract in writing may sue to have it rescinded, and such rescission may be

Sections 36—38.

adjudged by the Court in any of the following cases, namely—

(a) where the contract is voidable or terminable by the plaintiff;

(b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

(c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations

to (a)—A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to (b)—A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

36. Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made. Remission for mistake.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly. Alternative prayer for rescission in suit for specific performance.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require. Court may require party rescinding to do equity.

Sections 39—41.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

When cancellation may be ordered.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(a) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b) A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c) A, representing that the tenants on his lands were all at will sells it to B, and conveys it to him by an instrument, dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act. B may obtain the cancellation of this lease.

(d) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rupees 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered, according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

What instruments may be partially cancelled.

40. Where an instrument is evidence of different right, or different obligations, the Court may, in a proper case cancel it in part and allow it to stand for the residue.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

Power to require party for whom instrument is cancelled to make compensation.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Sections 42.

CHAPTER VI.

OF DECLARATORY DECREES.

42. Any person entitled to any legal character, or to any rights as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :

Discretion of Court as to declarations of status or right.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

EXPLANATION.—A trustee of property is a ‘person, interested to deny’ a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(a) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(b) A bequeaths his property to B, C and D, ‘to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children.’ No such children are in existence. In a suit against A’s executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(c) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(d) A alienates to B property in which A has merely a life-interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled.

(e) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her, may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow’s lifetime.

(f) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(g) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

Sections 43-52.

(h) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

Effect of declaration.

43. A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration.

A, a Hindu, in a suit to which B, his alleged wife, and her mother are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal right. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon. C

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

Appointment of Receivers discretionary.

Reference to Code of Civil Procedure.

44. The appointment of a Receiver pending a suit is a matter resting in the discretion of the Court.

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure.

[CHAPTER VIII.—*Of the enforcement of Public Duties.*

Omitted as directed by Notification No. 47 J., dated the 27th May 1878].

PART I.

OF PREVENTIVE RELIEF.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

Preventive relief how granted.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Sections 52-54.

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. Temporary injunctions.

They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff. Perpetual injunctions.

CHAPTER X.

OF PERPETUAL INJUNCTIONS.

54. Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication. Perpetual injunctions when granted.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that pecuniary compensation would not afford adequate relief;

(d) where it is probable that pecuniary compensation cannot be got for the invasion;

(e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

EXPLANATION.—For the purpose of this section a trademark is property.

Illustrations.

(a) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

Section 54.

(b) A trustee threatens a breach of trust. His co-trustees, if any should, and the beneficial owners may, sue for an injunction to prevent the breach,

(c) The Directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(d) The Directors of a fire and life insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(f) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(h) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(i) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(j) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(k) A lets certain arable lands to B for purposes of husbandry, But without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husband-like manner.

(l) A, B and C are partners, the partnership being determinable at will, A threatens to do an act tending to the destruction of the partnership, property. B and C may, without seeking a dissolution of the partnership sue for an injunction to restrain A from doing the act.

(m) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(n) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family house and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

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(o) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the Official Assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(p) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(q) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine, and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(v) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(x) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(z) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

**Mandatory
injunctions.**

*Section 56.**Illustrations.*

(a) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c) In the case put as Illustration (i) to section 54, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(d) In the case put as illustration (y) to section 54, the Court may also order A's letters to be destroyed.

(e) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(f) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(g) In the cases put as illustrations (v) and (w) to section 54 and as illustrations (e) and (f) to this section, the Court may also order the copies produced by piracy, and the trademarks, statements and communications therein respectively mentioned, to be given up or destroyed.

**Injunction
when refused.**

56. An injunction cannot be granted :—

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of, proceedings ;

(b) to stay proceedings in a Court not subordinate to that from which the injunction is sought ;

(c) to restrain persons from applying to any legislative body ;

(d) to interfere with the public duties of any department of the Government of India or the Local Government or with the sovereign acts of a Foreign Government ;

(e) to stay proceedings in any criminal matter ;

(f) to prevent the breach of a contract the performance of which would not be specifically enforced ;

(g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance ;

(h) to prevent a continuing breach in which the applicant has acquiesced ;

(i) when equally efficacious relief can certainly be obtained by any other usual mode of proceedings, except in case of breach of trust ;

Section 57.

(j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;

(k) where the applicant has no personal interest in the matter.

Illustrations.

(a) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(b) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one, and he cannot obtain an injunction.

57. Notwithstanding section 56, clause (f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement; provided that the applicant has not failed to perform the contract so far as it is binding on him.

Injunction
perform
negative
agreement.

Illustrations.

(a) A contracts to sell to B for Rupees 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rupees 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c) A contracts with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing in any other place of public entertainment.

Schedule.

(d) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a river house as clerk.

(e) A contracts with B that, in consideration of Rupees 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE.

(See Section 2.)

ENACTMENTS REPEALED.

Number and year	Subject	Extent of Repeal
VIII of 1859 ..	Civil Procedure	Sections 15 and 192.
XIV of 1859 ..	Limitation	Section 15.
XXIII of 1861 ..	Civil Procedure.. ..	Section 26.
IX of 1872 ..	Contract	In Section 28, the second clause of Exception 1.

ACT No. I OF 1878.

*Notification by the Government of India, Foreign Department,
Revenue, No. 93 I. R., dated the 21st November 1879.*

The Governor-General in Council is pleased to extend Act I of 1878 (The Opium Act, 1878) to Mysore, subject to the modifications hereinafter specified.

1. For the last two clauses of section 1, the following clause shall be substituted :—*And it shall come into force in Mysore on the first day of April 1880.*

2. Section 2 and the last paragraph of section 22 shall be omitted.

3. In section 3 in the definition of “Magistrate” the words “in the Presidency Towns, a Presidency Magistrate, and elsewhere” shall be omitted.

4. In section 12, in the third paragraph, the words “Collector of the District or”, in sections 19 and 24 the words “Collector of the District” and in section 24 the word “Collector” and the words “Collector, Deputy Collector or other” shall be omitted.

*5. For the words “the Local Government”, “any Local Government”, “the same Local Government”, “such Government” and “such Local Government” wherever they occur, and for the words “British India” in section 6, the words “the Chief Commissioner of Mysore” and “Mysore” respectively shall be substituted.

* As to this, however, (except in so far as it relates to the substitution of “Mysore” for “British India”), see Notification of the Government of Mysore No. 153, dated the 2nd September 1881, according to which the expressions “the Government of India,” “the Governor-General of India in Council,” and “Local Government” occurring in any Act in force in Mysore, are to denote “the Government of His Highness the Maharaja of Mysore.”

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SCHEDULE. [*Omitted.*]

Sections 1-3.

ACT No. I OF 1878.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL.
ON THE 9TH JANUARY 1878.)

An Act to amend the law relating to Opium.

WHEREAS it is expedient to amend the law relating to opium ; It is hereby enacted as follows :—

1. This Act may be called the Opium Act, 1878. Preamble.

[a] And it shall come into force in Mysore on the first day of April 1880. [a] Short title.

2. [*Repeal and amendment of enactments.*] Omitted as directed by Notification No. 93 I. R., dated the 21st November 1879. Commence-
ment.

3. In this Act, unless there be something repugnant in the subject or context,— Interpreta-
tion-clause.

“ opium ” includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy :

“ Magistrate ” means, [a] a Magistrate of the first class or (when specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class :

“ import ” means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government :

“ export ” means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government :

“ transport ” means to remove from one place to another within the territories administered by the same Local Government.

[a a] This clause was substituted for the last two clauses of Section 1 by para 1 of Notification No. 93 I. R., dated the 21st November 1879.

[a] Certain words in Section 3 relating to Presidency towns have been omitted as directed by Notification No. 93 I. R., dated the 21st November 1879

Sections 4—7.

Prohibition
of poppy-
cultivation
and posses-
sion, etc., of
opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

- (a) cultivate the poppy ;
- (b) manufacture opium ;
- (c) possess opium ;
- (d) transport opium ;
- (e) import or export opium ; or
- (f) sell opium.

Power to
make rules
to permit
such matters

5. The Local Government, with the previous sanction of the Governor-General in Council may, from time to time, by notification in the local Gazette, make rules consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

- (a) the cultivation of the poppy ;
- (b) the manufacture of opium ;
- (c) the possession of opium ;
- (d) the transport of opium ;
- (e) the importation or exportation of opium ; and
- (f) the sale of opium, and the form of duties leviable

on the sale of opium by retail :

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea customs for the time being in force or under section 6.

Duty on
opium im-
ported by
land.

6. The Governor-General in Council may, from time to time, by notification in the Gazette of India, impose such duty as he thinks fit on opium or on any kind of opium imported by land into [a] Mysore [a] or into any specified part thereof, and may alter or abolish any duty so imposed.

Warehousing
opium.

7. The Governor-General in Council may, by order notified in the Gazette of India, —

(a) authorize any Local Government to establish warehouses for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and

[a] The word "Mysore" has been substituted for "British India" in Section 4 as directed by Notification No. 93 I. R., dated the 21st November 1879.

Sections 8-9.

(b) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(c) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, or intended to be exported thence, and

(d) cancel any such declaration.

An order under clause (b) shall cancel all previous declarations under clause (c) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

8. The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the Local Gazette, make rules consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Power to
make rules
relating to
warehouses.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

Penalty for
illegal cultivation
of
poppy, etc.

(a) cultivates the poppy, or

(d) manufactures opium, or

(c) possesses opium, or

(d) transports opium, or

(e) imports or exports opium, or

(f) sells opium, or

(g) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months,

Sections 10—12.

and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

Presumption
in prosecu-
tions under
section 9.

10. In prosecutions under section 9, it shall be presumed until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation
of opium.

11. In any case in which an offence under section 9 has been committed :—

(a) the poppy so cultivated,

(b) the opium in respect of which any offence under the same section has been committed,

(c) where, in the case of an offence under clause (d) or (e) of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,

(d) where, in the case of an offence under clause (f) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

Order of
confiscation
by whom to
be made.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and

Sections 13—15.

determined by the [a] Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

13. The Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate :—

Power to make rules regarding disposal of things confiscated, and reward

(a) the disposal of all things confiscated under this Act; and

(b) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this act is manufactured, kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

(a) enter into any such building, vessel or place;

(b) in case of resistance, break open any door and remove any other obstacle to such entry;

(c) seize such opium and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium; and

(d) detain and search, and, if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

15. Any officer of any of the said departments may—

(a) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable

Power to seize opium in open places.

[a] Certain words in Section 12 have been omitted as directed by Notification No. 93 I. R., dated the 21st November 1879.

Sections 16—20.

to confiscation under section 11 or any other law for the time being in force relating to opium ;

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(b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

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16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1882 [a].

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17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

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18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall for every such offence be punished with fine not exceeding five hundred rupees.

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19. The [b] Deputy Commissioner or other officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1882 [a].

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20. Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station ; and every person arrested and thing seized under section 19

[a] The reference to Act. X of 1872 has been altered in accordance with Act X of 1882, s. 3.

[b] Certain words in Section 19 have been omitted as directed by Notification No. 93 I. R., dated the 21st November 1879.

Sections 21—24.

shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Report of arrests and seizures.

22. In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail. [a]

Procedure in case of illegal poppy-cultivation.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder, and any arrear due from any farmer of opium-revenue, may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any as if it were an arrear of land-revenue.

Recovery of arrears of fees, duties, etc.

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the [b] Deputy Commissioner or other officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and, on receiving such application, such [c] Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant :

Farmer may apply to Deputy Commissioner or other officer to recover amount due to him by licensee.

Provided that the execution of any process issued by such [d] officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to

[a] The last paragraph of Section 22 has been omitted as directed by Notification No. 93 I. R., dated the 21st November 1879.

[b] [c] [d] Certain words in Section 24 have been omitted as directed by Notification No. 93 I. R., dated the 21st November 1879.

Sections 25.

try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer :

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

recovery of
penalties due
under bond.

- 25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74 ; and upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

SCHEDULE.

[*Enactment repealed.*]

Omitted along with section 2.

Sections 1—3.

MADRAS ACT No. 1 OF 1873.

Notification by the Government of India, Foreign Department, Judicial, No. 88 J., dated Fort William, the 22nd May 1874.

His Excellency the Viceroy and Governor-General in Council is pleased to extend to Mysore the provisions of Madras Act I of 1873 (An Act to prevent the indiscriminate destruction of Wild Elephants).

(RECEIVED THE ASSENT OF THE GOVERNOR ON THE 21ST APRIL 1873, AND OF THE GOVERNOR-GENERAL ON THE 15TH MAY 1873.)

An Act to prevent the indiscriminate destruction of Wild Elephants.

WHEREAS it is expedient to make provision to prevent the indiscriminate destruction of wild elephants within the Presidency of Madras; It is hereby enacted as follows:—

1. This Act extends to the territories for the time being subject to the Government of the Presidency of Fort St. George; and it shall come into force on the first day of October 1873. Local exten.

2. From and after the said day, the destruction of wild elephants is prohibited, except as hereinafter provided. Commence-
ment.

3. Whoever shoots at, or intentionally destroys, or abets, within the meaning of the Indian Penal Code, the shooting at, or destruction of, any wild female elephant upon waste or forest land, whether such land be the property of Government or otherwise, shall be liable to a penalty not exceeding five hundred rupees, and, in default of payment, to simple or rigorous imprisonment for a period not exceeding three months. Destruction
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Any person convicted under this Act of an offence committed after his previous conviction under this Act, shall be liable to a penalty not exceeding one thousand rupees, and, in default of payment, to simple or rigorous imprisonment for a period not exceeding six months.

Sections 5-9.

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4 Whoever, not being authorized thereto by a license granted under the provisions of section 7, shoots at, or intentionally destroys, or abetths, a within meaning of the Indian Penal Code, the shooting et, or destruction of, any wild male elephaput uon waste or forest land, the property of the Government, shall, upon a first or second conviction, be liable to the penalties and periods of imprisonment respectively provided for a first or second conviction in section 3 of this Act.

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5. Nothing in this Act shall be deemed to prevent any zemindar or other proprietor or occupier of land, or any person duly authorized in that behalf by any such zamindar, proprietor, or occupier, from destroying wild male elephants upon the waste or forest lands of such zamindar, proprietor or occupier.

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6. Nothing in this Act shall be deemed to prevent any person from shooting at, or destroying any wild male or female elephant found upon cultivated lands, or upon or in the immediate vicinity of any public road, or to prevent any person from shooting at or destroying any male or female elephant in defence of himself or any other person.

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phants.

7. The Collector or other officer in charge of a district may, subject to such rules as may, from time to time, be made by the Local Government, issue a license to any person authorizing him by name to shoot wild male elephants upon waste or forest lands, the property of the Government, in such district, for the period of one year from the date of the grant of such license.

Every such license shall become void at the expiration of the said period, but may be renewed by such Collector or other officer for a like period.

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Provided that every such license shall become void upon the conviction under this Act of the person to whom such license was granted.

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8. The Local Government may make rules for regulating the grant or renewal of licenses under this Act, and the fees to be charged on such grant or renewal, and may, from time to time, alter or cancel such rules.

Limitation of
prosecution.

9. Every prosecution under this Act shall be commenced within a period of six months from the date of the offence in respect of which it is instituted.

Sections 1-2.

MADRAS ACT No. VIII OF 1878.

Notification by the Government of India, Foreign Department, Judicial, No. 130 I. J., dated Simla, the 19th June 1879.

The Governor-General in Council is pleased to extend Madras Act. No. VIII 1878 (The Madras Coffee Stealing Prevention Act, 1878) to the Province of Mysore, subject to the following modifications, namely :—

In section 1, for the word “Madras” the word “Mysore,” and in section 2, for the words “Governor in Council,” the words “Governor-General in Council,” * shall be substituted.

(RECEIVED THE GOVERNOR’S ASSENT ON THE 10TH AUGUST 1878 AND THE GOVERNOR GENERAL’S ASSENT ON THE 28TH SEPTEMBER 1878.)

An Act to prevent Thefts of Coffee.

WHEREAS it is expedient to make special provision to prevent thefts of coffee, and to repress and punish the offence of receiving or disposing of stolen coffee in the neighbourhood of coffee plantations or estates ; It is enacted as follows :—

Preamble.

1. This Act may be called “The [a] Mysore [a] Coffee-Stealing Prevention Act, 1878.”

Short-title.

2. †This Act shall take effect in such districts, divisions or parts of districts, or within such localities or limits within [a] the Presidency of Fort St. George, [a] and from

Commencement and local extent of Act.

*Under Notification of the Government of Mysore, No. 153, dated the 2nd September 1881, the substituted expression “Governor-General in Council” will denote the Government of His Highness the Maharaja of Mysore.

(a-a) This word “Mysore” was substituted for “Madras” by Notification No. 130 I. J., dated the 19th June 1879.

† Under this section it was directed that the Act should take effect in the parts of the districts mentioned below namely :—

Mysore District.—The taluks of Chamrajnagar, Gundlupet, Periyapatna. Heggadde, ankote.

Hassan District.—The taluks of Arkalgud, Hole-Narsipur, Manjarabad, Belur, Hassan.

Kadur District.—The taluks of Mudgere, Kopps, Lakvalli, Tarikere, Chikma-Salur.

Shimoga District.—The taluks of Kavaledurga and Nagar.

Vide Notification by the Government of India, No. 242 I. J, dated the 3rd September 1879.

(a-a) The introducing Notification should have provided for these words being replaced by the words “the territories of Mysore.”

Sections 3—5.

- such date as the [a] Governor-General in Council* [a] may from time to time direct by notification published in the official Gazette.

Power to modify or annul notification.

The [a] Governor-General in Council [a] may from time to time modify or cancel such direction by notification, similarly published.

Interpretation.

3. In this Act.

Laborer.

"Laborer" means and includes all persons (except resident managers) temporarily or permanently employed on a coffee-estate in any capacity, whether agricultural, menial or otherwise howsoever.

Carrier.

"Carrier" means and includes all persons for the time being employed in the transport of coffee, whether by portage, packanimals, boat, cart or otherwise, and whether as contractors, drivers or otherwise.

Coffee-estate.

"Coffee-estate" means and includes any land on which coffee is growing.

Coffee.

"Coffee" means and includes all coffee not roasted or otherwise prepared for immediate consumption.

Coffee not to be taken from laborers.

4. It shall not be lawful for any one to purchase, take in barter or exchange, or receive coffee from any labourer employed on a coffee-estate.

Coffee not to be taken from other than laborer, unless particulars entered in book.

5. It shall not be lawful for any one to purchase, take in barter or exchange, or receive coffee from any person other than a labourer employed on a coffee-estate, unless the person so purchasing, taking in barter or exchange, or receiving such coffee shall immediately thereupon enter or cause to be entered in a book to be kept by him for that purpose a true record of such transaction, specifying:—

(a) the name, residence and occupation of the person from whom such coffee was so purchased, taken in barter or exchange, or received;

(b) the date of the transaction; and

(c) the quantity and description of the coffee so purchased, taken in barter or exchange, or received:

Section not to apply to coffee taken for bona fide personal consumption.

Provided that this section shall not apply to coffee purchased, taken in barter or exchange, or received from any person other than a laborer employed on a coffee-estate, and intended *bona fide* for consumption in the house or on the premises of the person purchasing, taking in barter or exchange, or receiving the same as aforesaid.

(a-a) These words were substituted for the words "Governor in Council" by Notification No. 130, I. J., dated the 19th June 1879.

Sections 6—10.

6. All books required by section 5 to be kept by persons purchasing coffee shall be produced upon the requisition of any police officer not below the rank of an officer in charge of a police station, generally or specially authorized by any Magistrate to require the production of such books.

Books to be produced on police officer's requisition.

7. It shall not be lawful for any one to purchase or take in barter or exchange coffee from any carrier, or for any carrier to sell or give in barter or exchange any coffee, unless the person so purchasing or taking in barter or exchange such coffee shall, besides making the entry required by section 5 of this Act, also enter or cause to be entered in the book mentioned in the said section 5 the marks (if any) on the bags or other packages in which such coffee may be contained, and unless the entries required by this section and by the said section 5 be also correctly signed by such carrier in his own name, and attested by a police-officer or the headman of the village within which the transaction takes place; for which attestation no fee shall be chargeable.

Conditions under which coffee may be taken from a carrier.

8. Any person committing any breach of the provisions contained in section 4, 5, 6 or 7 of this Act shall be liable, on conviction by a Magistrate, to pay a fine not exceeding five hundred rupees.

Penalty for breach of section 4, 5, 6 or 7.

9. Any cooly, maistry or other laborer employed on a coffee estate found with green gathered coffee in his possession, and failing to account satisfactorily for such possession, shall be liable, on conviction by a Magistrate, to pay a fine not exceeding five hundred rupees.

Penalty in case of laborer being found in possession of green coffee for which he cannot account. Coffee not to be carried without permission of owner or agent. Permission to be in writing, etc.

10. No person shall carry or remove coffee from any coffee estate, premises or place, or upon any road, highway or footway, without the express permission of the owner or of his authorized agent.

Such permission shall be in writing, dated and signed by the said owner or his authorized agent, and shall contain the following particulars:—

- (a) the quantity of the coffee to be carried or removed;
- (b) the number, description and marks of the packages in which coffee is secured;
- (c) the place or destination to which the coffee is to be carried or removed; and
- (d) the names of the consigner and consignee.

Any person committing any breach of the provisions of this section shall, on conviction by a Magistrate, be liable to pay a fine not exceeding five hundred rupees.

Penalty for breach of this section.

Sections 11—14.

Hours of gathering or removing coffee.

Penalty for breach of above provision.

Section 10 and this section not to apply to ordinary operations of curing.

Procedure if gathering, etc., was done to commit theft.

Substituted or additional punishment for second offence under section 9.

Proviso.

Fines to be paid into public treasury.

Magistrate may grant rewards to informers.

11. No coffee shall be gathered, moved, loaded or unloaded on any coffee-estate between sunset and sunrise.

Any person committing a breach of this provision, abetting (within the meaning of the Indian Penal Code) such breach, shall, on conviction by a Magistrate, be liable to pay a fine not exceeding five hundred rupees :

Provided that nothing in section 10 or in this section shall apply to the ordinary operations of curing the crop of the estate, such as pulping or storing.

12. If it shall appear that such gathering, moving, loading or unloading was for the purpose of committing theft, the person or persons so engaged shall be liable to be charged with theft, or abetment of theft, and be proceeded against for such offence under the provisions of section 378 and 379 or sections 107, 108 and 109 of the Indian Penal Code, as the case may be.

13. It shall be at the discretion of the Magistrate, in the case of any persons, not being females, who shall be convicted of a second offence under section 9 of this Act to substitute or add corporal punishment under the provisions of Act No. VI of 1864 (*An Act to authorize the punishment of whipping in certain cases*), or of any other law for the time being in force in that behalf for or to the penalties provided by this Act :

Provided that such substituted or additional punishment shall be awarded only in respect of the offence itself and not as an alternative penalty for non-payment of fine.

14. All fines paid or levied under this Act shall be paid into the public treasury :

Provided that the Magistrate trying any case under this Act may grant the whole or any portion of any fine levied therein as rewards to persons furnishing such information as may have led to the conviction of offenders under this Act.

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